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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

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TITLE 25

FIRE PROTECTION AND SAFETY

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RESEARCH REFERENCES

Am. Jur. Trials. — Actions on Fire Insurance Policies, 10 Am. Jur. Trials 301.

Preparation and Trial of Arson Case, 19 Am. Jur. Trials 685.

Use of Discovery in Product Related Burn Injury Cases, 22 Am. Jur. Trials 199.

Television Fire Litigation, 26 Am. Jur. Trials 463.

Preparing the Portable Kerosene Heater Case for Trial, 43 Am. Jur. Trials 315.

Handling Fire Claims Out of Court, 57 Am. Jur. Trials 155.

CHAPTER 1

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Am. Jur. Proof of Facts. — Innkeeper's Failure to Protect Against Fire, 14 POF2d 657.

Failure to Prevent Outbreak and Spread of Fire, 23 POF2d 461.

Point of Origin of Fire — Improperly Installed or Maintained Heating Appliance, 27 POF2d 1.

Improper or Defective Wiring as Cause of Fire, 47 POF2d 451.

Electric Signs — Determining the Cause of Property Damages or Personal Injury, 23 POF3d 159.

CHAPTER 2

REGULATION OF FIRE AND OTHER HAZARDS TO PERSONS AND PROPERTY GENERALLY

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Negligent Fire Inspection by City or State Employee, 22 POF2d 55.

25-2-4.1. Safety Fire Commissioner — Fees and charges.

(a) The Commissioner is authorized to assess and collect, and persons so assessed shall pay in advance to the Commissioner, fees and charges under this chapter as follows:

(1) New anhydrous ammonia permit for storage in bulk (more than 2,000 gallons aggregate capacity) for sale or distribution one-time fee	$ 150.00
(2) Annual license for manufacture of explosives other than fireworks	150.00
(3) Annual license for manufacture, storage, or transport of fireworks	1,500.00
(4) Carnival license	150.00
(5) Certificate of occupancy	100.00
(6) Construction plan review:	
(A) Bulk storage construction	150.00
(B) Building construction, 10,000 square feet or less	150.00
(C) Building construction, more than 10,000 square feet	.015 per square foot
(D) Other construction	150.00
(7) Fire sprinkler contractor certificate of competency	150.00
(8) Liquefied petroleum gas storage license:	
(A) 2,000 gallons or less	150.00
(B) More than 2,000 gallons	600.00
(9) Building construction inspection:	
(A) 80 percent completion, 100 percent completion, annual, and first follow-up	none
(B) Second follow-up	150.00
(C) Third and each subsequent follow-up	220.00
(10) Purchase, storage, sale, transport, or use of explosives other than fireworks:	
(A) 500 pounds or less	75.00
(B) More than 500 pounds	150.00

(11) New self-service gasoline station permit one-time fee 150.00

(12) New permit to dispense compressed natural gas (CNG) for vehicular fuel one-time fee 150.00

(b) The licenses and permits for which fees or charges are required pursuant to this Code section shall not be transferable. A new license or permit and fee are required upon change of ownership. (Code 1981, § 25-2-4.1, enacted by Ga. L. 1992, p. 2725, § 4; Ga. L. 1993, p. 448, § 1; Ga. L. 2010, p. 9, § 1-50/HB 1055.)

The 2010 amendment, effective May 12, 2010, in subsection (a), substituted "150.00" for "100.00" throughout, substituted "1,500.00" for "1,000.00" in paragraph (a)(3), substituted "600.00" for "500.00" in subparagraph (a)(8)(B), substituted "220.00" for "150.00" in subparagraph (a)(9)(C), and substituted "75.00" for "50.00" in subparagraph (a)(10)(A).

25-2-12. Adoption of state fire safety standards and enforcement; investigations; excuse from compliance with standards; interpretation of standards and granting variances therefrom by Commissioner.

Law reviews. — For article, "Local Government Litigation: Some Pivotal Principles," see 55 Mercer L. Rev. 1 (2003).

25-2-13. Buildings presenting special hazards to persons or property; requirements as to construction, maintenance, and use generally; effect of rules, regulations, and fire safety standards issued before April 1, 1968; power of local governing authorities.

(a) As used in this Code section, the term:

(1) "Capacity" means the maximum number of persons who may be reasonably expected to be present in any building or on any floor thereof at a given time according to the use which is made of such building. The Commissioner shall determine and by rule declare the formula for determining capacity for each of the uses described in this Code section.

(2) "Historic building or structure" means any individual building or any building which contributes to the historic character of a historic district, so designated by the state historic preservation officer pursuant to rules and regulations adopted by the Board of Natural Resources, or as so designated pursuant to the provisions of Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act."

(3) "Landmark museum building" means a historic building or structure used as an exhibit of the building or structure itself which exhibits a high degree of architectural integrity and which is open to the public not fewer than 12 days per year; however, additional uses, original or ancillary, to the use as a museum shall be permitted within the same building subject to the provisions of paragraph (3) of subsection (b) of this Code section. Landmark museum buildings must be so designated by the state historic preservation officer pursuant to rules and regulations adopted by the Board of Natural Resources.

(b)(1) Certain buildings and structures, because of construction or use, may constitute a special hazard to property or to the life and safety of persons on account of fire or panic from fear of fire. Buildings constructed or used in the following manner present such a special hazard:

(A) Buildings or structures more than three stories in height; provided, however, that nothing in this Code section shall apply to any individually owned residential unit within any such building;

(B) Any building three or more stories in height and used as a residence by three or more families, with individual cooking and bathroom facilities for each family; provided, however, that nothing in this Code section shall apply to any individually owned residential unit within any such building;

(C) Any building in which there are more than 15 sleeping accommodations for hire, with or without meals but without individual cooking facilities, whether designated as a hotel, motel, inn, club, dormitory, rooming or boarding house, or by any other name;

(D) Any building or group of buildings which contain schools and academies for any combination of grades one through 12 having more than 15 children or students in attendance at any given time and all state funded kindergarten programs;

(E) Hospitals, health care centers, mental health institutions, orphanages, nursing homes, convalescent homes, old age homes, jails, prisons, reformatories, and all administrative, public assembly, and academic buildings of colleges, universities, and vocational-technical schools. As used in this subparagraph, the terms "nursing homes," "convalescent homes," and "old age homes" mean any building used for the lodging, personal care, or nursing care on a 24 hour basis of four or more invalids, convalescents, or elderly persons who are not members of the same family;

(F) Racetracks, stadiums, and grandstands;

(G) Theaters, auditoriums, restaurants, bars, lounges, nightclubs, dance halls, recreation halls, and other places of public assembly having an occupant load of 300 or more persons, except that the occupant load shall be 100 or more persons in those buildings where alcoholic beverages are served;

(G.1) Churches having an occupant load of 500 or more persons in a common area or having an occupant load greater than 1,000 persons based on total occupant load of the building or structure;

(H) Department stores and retail mercantile establishments having a gross floor area of 25,000 square feet on any one floor or having three or more floors that are open to the public. For purposes of this subparagraph, shopping centers and malls shall be assessed upon the basis of the entire area covered by the same roof or sharing common walls; provided, however, that nothing in this Code section shall apply to single-story malls or shopping centers subdivided into areas of less than 25,000 square feet by a wall or walls with a two-hour fire resistance rating and where there are unobstructed exit doors in the front and rear of every such individual occupancy which open directly to the outside;

(I) Group day-care homes and day-care centers required to be licensed or commissioned as such by the Department of Early Care and Learning and in which at least seven children receive care. As used in this subparagraph, the term "group day-care home" means a day-care facility subject to licensure by the Department of Early Care and Learning where at least seven but not more than 12 children receive care; and the term "day-care center" means a day-care facility subject to licensure or issuance of a commission by the Department of Early Care and Learning where more than 12 children receive care. Fire safety standards adopted by rules of the Commissioner pursuant to Code Section 25-2-4 which are applicable to group day-care homes and day-care centers shall not require staff-to-child ratios; and

(J) Personal care homes and assisted living communities required to be licensed as such by the Department of Community Health and having at least seven beds for nonfamily adults, and the Commissioner shall, pursuant to Code Section 25-2-4, by rule adopt state minimum fire safety standards for those homes, and any structure constructed as or converted to a personal care home on or after April 15, 1986, shall be deemed to be a proposed building pursuant to subsection (d) of Code Section 25-2-14 and that structure may be required to be furnished with a sprinkler system meeting the standards established by the Commissioner if he deems this necessary for proper fire safety.

(2) Any building or structure which is used exclusively for agricultural purposes and which is located in an unincorporated area shall

be exempt from the classification set forth in paragraph (1) of this subsection.

(3)(A) The provisions of this paragraph relating to landmark museum buildings shall apply only to those portions of such buildings which meet all the requirements of a landmark museum building, except as otherwise provided in subparagraphs (B) and (C) of this paragraph. Subparagraphs (B) and (C) of this paragraph shall, unless otherwise provided in such subparagraphs, preempt all state laws, regulations, or rules governing reconstruction, alteration, repair, or maintenance of landmark museum buildings. Local governing authorities may recognize the designation of landmark museum buildings by ordinance and authorize the local enforcement authority to incorporate the provisions of subparagraphs (B) and (C) of this paragraph into their local building and fire codes. Subparagraphs (D) and (E) of this paragraph shall apply to other historic buildings or structures.

(B) A landmark museum building shall be subject to the following provisions:

(i) Repairs, maintenance, and restoration shall be allowed without conformity to any state building or fire safety related code, standard, rule, or regulation, provided the building is brought into and remains in full compliance with this paragraph;

(ii) In the case of fire or other casualty to a landmark museum building, it may be rebuilt, in total or in part, using such techniques and materials as are necessary to restore it to the condition prior to the fire or casualty and use as a totally preserved building; or

(iii) If a historic building or structure, as a result of proposed work or changes in use, would become eligible and would be so certified as a landmark museum building, and the state historic preservation officer so certifies and such is submitted to the state fire and building code official with the construction or building permit application, then the work may proceed under the provisions of this paragraph.

(C) All landmark museum buildings shall comply with the following requirements:

(i) Every landmark museum building shall have portable fire extinguishers as deemed appropriate by the state or local fire authority having jurisdiction based on the applicable state or local fire safety codes or regulations;

(ii) All landmark museum buildings which contain residential units shall have electrically powered smoke or products of

combustion detectors installed within each living unit between living and sleeping areas. Such detectors shall be continuously powered by the building's electrical system. When activated, the detector shall initiate an alarm which is audible in sleeping rooms of that living unit. These unit detectors shall be required in addition to any other protective system that may be installed in the building;

(iii) For all landmark museum buildings, except those protected by a total automatic fire suppression system and one and two family dwellings, approved automatic fire warning protection shall be provided as follows: install at least one listed smoke or products of combustion detector for every 1,200 square feet of floor area per floor or story. In addition, all lobbies, common corridors, hallways, and ways of exit access shall be provided with listed smoke or products of combustion detectors not more than 30 feet apart. Detectors shall be so connected as to sound an alarm audible throughout the structure or building. With respect to buildings which are totally protected by an automatic fire suppression system, activation of the sprinkler system shall sound an alarm throughout the structure or building;

(iv) Smoke or products of combustion detectors shall be listed by a nationally recognized testing laboratory;

(v) All multistory landmark museum buildings, except one and two family dwellings, with occupancy above or below the street or grade level shall have manual fire alarm pull stations in the natural path of egress. The activation of a manual pull station shall cause the building fire warning system to sound;

(vi) Approved exit signs shall be located where designated by the local or state authority having jurisdiction in accordance with the applicable state or local code, standard, rule, or regulation;

(vii) Except for one and two family dwellings, every landmark museum building occupied after daylight, or which has occupied areas subject to being totally darkened during daylight hours due to a power failure or failure of the electrical system, shall be equipped with approved emergency lighting meeting the provisions of the applicable state or local code, standard, rule, or regulation;

(viii) Occupant loading of landmark museum buildings or structures shall be limited by either the actual structural floor load capacity or by the limitations of means of egress or by a combination of factors. Actual floor load capacity shall be determined by a Georgia registered professional engineer. Said floor

load shall be posted at a conspicuous location. The building owner shall submit evidence of this certification and related computations to the enforcement authority having jurisdiction, upon request. Where one or more floors of a landmark museum building have only one means of egress, the occupant load shall be computed and occupancy limited as determined by the state or local fire marshal; and

(ix) The electrical, heating, and mechanical systems of landmark museum buildings shall be inspected and any conditions that create a threat of fire or a threat to life shall be corrected in accordance with applicable standards to the extent deemed necessary by the state or local authority having jurisdiction.

(D) Historic buildings not classified as landmark museum buildings shall meet the requirements of applicable state or local building and fire safety laws, ordinances, codes, standards, rules, or regulations as they pertain to existing buildings. If a historic building or structure is damaged from fire or other casualty, it may be restored to the condition prior to the fire or casualty using techniques and methods consistent with its original construction, or it shall meet the requirements for new construction of the applicable state or local codes, standards, rules, or regulations, provided these requirements do not significantly compromise the features for which the building was considered historically significant.

(E) As to any buildings or structures in the State of Georgia which meet the criteria of paragraph (1) of subsection (b) of this Code section and thus fall under the jurisdiction of the Safety Fire Commissioner and which also have been designated as historically significant by the state historic preservation officer, the appropriate enforcement official, in granting or denying a variance pursuant to subsection (e) of Code Section 25-2-12, shall consider the intent of this chapter, with special attention to paragraph (3) of this subsection, Article 3 of Chapter 2 of Title 8, "The Uniform Act for the Application of Building and Fire Related Codes to Existing Buildings," Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act," and the Secretary of Interior's Standards for Preservation Projects.

(4) Nothing in this subsection shall be construed as exempting any building, structure, facility, or premises from ordinances enacted by any municipal governing authority in any incorporated area or any county governing authority in any unincorporated area, except to the extent stated in paragraph (3) of this subsection relative to landmark museum buildings or historic buildings or structures.

(c) Every person who owns or controls the use of any building, part of a building, or structure described in paragraph (1) of subsection (b) of

this Code section, which, because of floor area, height, location, use or intended use as a gathering place for large groups, or use or intended use by or for the aged, the ill, the incompetent, or the imprisoned, constitutes a special hazard to property or to the life and safety of persons on account of fire or panic from fear of fire, must so construct, equip, maintain, and use such building or structure as to afford every reasonable and practical precaution and protection against injury from such hazards. No person who owns or controls the use or occupancy of such a building or structure shall permit the use of the premises so controlled for any such specially hazardous use unless he has provided such precautions against damage to property or injury to persons by these hazards as are found and determined by the Commissioner in the manner described in subsection (d) of this Code section to be reasonable and practical.

(d) The Commissioner is directed to investigate and examine construction and engineering techniques; properties of construction materials, fixtures, facilities, and appliances used in, upon, or in connection with buildings and structures; and fire prevention and protective techniques, including, but not limited to, the codes and standards adopted, recommended, or issued from time to time by the National Fire Protection Association (National Fire Code and National Electric Code), the American Insurance Association (National Building Code), the successor to the National Board of Fire Underwriters, the American Standards Association, and the Standard Building Code Congress (Southern Standard Building Code). Based upon such investigation, the Commissioner is authorized to determine and by rule to provide what reasonable and practical protection must be afforded property and persons with respect to: exits; fire walls and internal partitions adequate to resist fire and to retard the spread of fire, smoke, heat, and gases; electrical wiring, electrical appliances, and electrical installations; safety and protective devices, including, but not limited to, fire escapes, fire prevention equipment, sprinkler systems, fire extinguishers, panic hardware, fire alarm and detection systems, exit lights, emergency auxiliary lights, and other similar safety devices; flameproofing; motion picture equipment and projection booths; and similar facilities; provided, however, that any building described in subparagraph (b)(1)(C) of this Code section shall be required to have a smoke or products of combustion detector listed by a nationally recognized testing laboratory; and, regardless of the manufacturer's instructions, such detectors in these buildings shall be located in all interior corridors, halls, and basements no more than 30 feet apart or more than 15 feet from any wall; where there are no interior halls or corridors, the detectors shall be installed in each sleeping room. All detection systems permitted after April 1, 1992, shall be powered from the building's electrical system and all detection systems required by this chapter,

permitted after April 1, 1992, shall have a one and one-half hour emergency power supply source. Required corridor smoke detector systems shall be electrically interconnected to the fire alarm, if a fire alarm is required. If a fire alarm is not required, the detectors at a minimum shall be approved single station detectors powered from the building electrical service.

(e) All rules and regulations promulgated before April 1, 1968, by the Commissioner or the state fire marshal and the minimum fire safety standards adopted therein shall remain in full force and effect where applicable until such time as they are amended by the appropriate authority.

(f) The municipal governing authority in any incorporated area or the county governing authority in any unincorporated area of the state shall have the authority to enact such ordinances as it deems necessary to perform fire safety inspections and related activities for those buildings and structures not covered in this Code section.

(g) Notwithstanding any other provision of law or any local ordinance to the contrary, in the event of a conflict between any code or standard of the National Fire Protection Association (National Fire Code and National Electric Code) and of the Standard Building Code Congress (Southern Standard Building Code), the code or standard of the National Fire Protection Association (National Fire Code and National Electric Code) shall prevail. The order of precedence established by this subsection shall apply to all buildings and structures whether or not such buildings and structures are covered under this Code section. (Ga. L. 1949, p. 1057, § 8; Ga. L. 1967, p. 619, § 1; Ga. L. 1981, p. 1779, §§ 5, 6; Ga. L. 1982, p. 3, § 25; Ga. L. 1984, p. 1160, §§ 3-6; Ga. L. 1985, p. 149, § 25; Ga. L. 1985, p. 869, § 1; Ga. L. 1985, p. 936, §§ 1, 2; Ga. L. 1985, p. 1642, § 2; Ga. L. 1987, p. 3, § 25; Ga. L. 1988, p. 668, § 1; Ga. L. 1989, p. 815, §§ 1, 2; Ga. L. 1989, p. 918, § 1; Ga. L. 1989, p. 1795, § 2; Ga. L. 1990, p. 1500, § 1; Ga. L. 1992, p. 2186, §§ 3, 4; Ga. L. 1996, p. 1632, § 2; Ga. L. 2004, p. 645, § 4; Ga. L. 2008, p. 12, § 2-6/SB 433; Ga. L. 2011, p. 227, § 6/SB 178.)

The 2004 amendment, effective October 1, 2004, substituted "Early Care and Learning" for "Human Resources" throughout subparagraph (b)(1)(I).

The 2008 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in subparagraph (b)(1)(J).

The 2011 amendment, effective July 1, 2011, inserted "and assisted living communities" near the beginning of subparagraph (b)(1)(J).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 1C Am. Jur. Pleading and Practice Forms, Amusements and Exhibitions, § 2.

25-2-14. Buildings presenting special hazards to persons or property — Requirement, issuance, etc., of building permits and certificates of occupancy; fees; employment of private professional providers to perform building plan reviews when state fire marshal, local fire marshal, state inspector, or designated code official cannot timely perform such services.

(a)(1) Plans and specifications for all proposed buildings which come under classification in paragraph (1) of subsection (b) of Code Section 25-2-13 and which come under the jurisdiction of the office of the Commissioner pursuant to Code Section 25-2-12 shall be submitted to and receive approval by either the state fire marshal, the proper local fire marshal, or state inspector before any state, municipal, or county building permit may be issued or construction started. All such plans and specifications submitted as required by this subsection shall be accompanied by a fee in the amount provided in Code Section 25-2-4.1 and shall bear the seal and Georgia registration number of the drafting architect or engineer or shall otherwise have the approval of the Commissioner.

(2)(A) If the state fire marshal, the proper local fire marshal, state inspector, or designated code official cannot provide plan review within 30 business days of receiving a written application for permitting in accordance with the code official's plan submittal process, then, in lieu of plan review by personnel employed by such governing authority, any person, firm, or corporation engaged in a construction project which requires plan review, regardless if the plan review is required by subsection (a) of this Code section or by local county or municipal ordinance, shall have the option of retaining, at its own expense, a private professional provider to provide the required plan review. As used in this paragraph, the term "private professional provider" means a professional engineer who holds a certificate of registration issued under Chapter 15 of Title 43 or a professional architect who holds a certificate of registration issued under Chapter 4 of Title 43, who is not an employee of or otherwise affiliated with or financially interested in the person, firm, or corporation engaged in the construction project to be reviewed.

(B) The state fire marshal, the proper local fire marshal, state inspector, or designated code official shall advise the permit applicant at the time the complete submittal application for a permit in accordance with the code official's plan submittal process is received that the state fire marshal, the proper local fire marshal, state inspector, or designated code official intends to complete the required plan review within the time prescribed by this paragraph

or that the applicant may immediately secure the services of a private professional provider to complete the required plan review pursuant to this subsection. The plan submittal process shall include those procedures and approvals required by the local jurisdiction before plan review can take place. If the state fire marshal, the proper local fire marshal, state inspector, or designated code official states its intent to complete the required plan review within the time prescribed by this paragraph, the applicant shall not be authorized to use the services of a private professional provider as provided in this subsection. The permit applicant and the state fire marshal, the proper local fire marshal, state inspector, or designated code official may agree by mutual consent to extend the time period prescribed by this paragraph for plan review if the characteristics of the project warrant such an extension. However, if the state fire marshal, the proper local fire marshal, state inspector, or designated code official states its intent to complete the required plan review within the time prescribed by this paragraph, or any extension thereof mutually agreed to by the applicant and the state fire marshal, the proper local fire marshal, state inspector, or designated code official and does not permit the applicant to use the services of a private professional provider and the state fire marshal, the proper local fire marshal, state inspector, or designated code official fails to complete such plan review in the time prescribed by this paragraph, or any extension thereof mutually agreed to by the applicant and the state fire marshal, the proper local fire marshal, state inspector, or designated code official, the state fire marshal, the proper local fire marshal, state inspector, or designated code official shall issue the applicant a project initiation permit to allow the applicant to begin work on the project, provided that portion of the initial phase of work is compliant with applicable codes, laws, and rules. If a full permit is not issued for the portion requested for permitting, then the state fire marshal, the proper local fire marshal, state inspector, or designated code official shall have an additional 20 business days to complete the review and issue the full permit. If the plans submitted for permitting are denied for any deficiency, the time frames and process for resubmittal shall be governed by divisions (2)(H)(iii) through (2)(H)(v) of this subsection.

(C) Any plan review or inspection conducted by a private professional provider shall be no less extensive than plan reviews or inspections conducted by state, county, or municipal personnel responsible for review of plans for compliance with the state's minimum fire safety standards and, where applicable, the state's minimum accessibility standards.

(D) The person, firm, or corporation retaining a private professional provider to conduct a plan review shall be required to pay to

the state fire marshal, the proper local fire marshal, state inspector, or designated code official which requires the plan review the same regulatory fees and charges which would have been required had the plan review been conducted by the state fire marshal, the proper local fire marshal, state inspector, or designated code official.

(E) A private professional provider performing plan reviews under this subsection shall review construction plans to determine compliance with the state's minimum fire safety standards in effect which were adopted pursuant to this chapter and, where applicable, the state's minimum accessibility standards adopted pursuant to Chapter 3 of Title 30. Upon determining that the plans reviewed comply with the applicable codes and standards as adopted, such private professional provider shall prepare an affidavit or affidavits on a form prescribed by the Safety Fire Commissioner certifying under oath that the following is true and correct to the best of such private professional provider's knowledge and belief and in accordance with the applicable professional standard of care:

(i) The plans were reviewed by the affiant who is duly authorized to perform plan review pursuant to this subsection and who holds the appropriate license or certifications and insurance coverage and insurance coverage stipulated in this subsection; and

(ii) The plans comply with the state's minimum fire safety standards in effect which were adopted pursuant to this chapter and, where applicable, the state's minimum accessibility standards adopted pursuant to Chapter 3 of Title 30.

(F) All private professional providers providing plan review services pursuant to this subsection shall secure and maintain insurance coverage for professional liability (errors and omissions) insurance. The limits of such insurance shall be not less than $1 million per claim and $1 million in aggregate coverage. Such insurance may be a practice policy or project-specific coverage. If the insurance is a practice policy, it shall contain prior acts coverage for the private professional provider. If the insurance is project-specific, it shall continue in effect for two years following the issuance of the certificate of final completion for the project. The state fire marshal, the proper local fire marshal, state inspector, or designated code official may establish, for private professional providers working within their respective jurisdictions specified by this chapter, a system of registration listing the private professional providers within their areas of competency and verifying compliance with the insurance requirements of this subsection.

(G) The private professional provider shall be empowered to perform any plan review required by the state fire marshal, the proper local fire marshal, state inspector, or designated code official, regardless if the plan review is required by this subsection or by local county or municipal ordinance, provided that the plan review is within the scope of such private professional provider's area of expertise and competency. This subsection shall not apply to hospitals, ambulatory health care centers, nursing homes, jails, penal institutions, airports, buildings or structures that impact national or state homeland security, or any building defined as a high-rise building in the State Minimum Standards Code, provided that interior tenant build-out projects within high-rise buildings are not exempt from this subsection, or plans related to Code Section 25-2-16 or 25-2-17 or Chapter 8, 9, or 10 of this title.

(H)(i) The permit applicant shall submit a copy of the private professional provider's plan review report to the state fire marshal, the proper local fire marshal, state inspector, or designated code official. Such plan review report shall include at a minimum all of the following:

(I) The affidavit of the private professional provider required pursuant to this subsection;

(II) The applicable fees required for permitting;

(III) Other documents deemed necessary due to unusual construction or design, smoke removal systems where applicable with engineering analysis, and additional documentation required where performance based code options are used; and

(IV) Any documents required by the state fire marshal, the proper local fire marshal, state inspector, or designated code official to determine that the permit applicant has secured all other governmental approvals required by law.

(ii) No more than 30 business days after receipt of a permit application and the private professional provider's plan review report required pursuant to this subsection, the state fire marshal, the proper local fire marshal, state inspector, or designated code official shall issue the requested permit or provide written notice to the permit applicant identifying the specific plan features that do not comply with the applicable codes or standards, as well as the specific reference to the relevant requirements. If the state fire marshal, the proper local fire marshal, state inspector, or designated code official does not provide a written notice of the plan deficiencies within the prescribed 30 day period, the permit application shall be deemed approved as a matter of law and the permit shall be issued by the state fire

marshal, the proper local fire marshal, state inspector, or designated code official on the next business day.

(iii) If the state fire marshal, the proper local fire marshal, state inspector, or designated code official provides a written notice of plan deficiencies to the permit applicant within the prescribed 30 day period, the 30 day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to this chapter, the promulgated rules and regulations adopted thereunder, or, where appropriate for existing buildings, the local governing authority's appeals process or the permit applicant may submit revisions to correct the deficiencies.

(iv) If the permit applicant submits revisions, the state fire marshal, the proper local fire marshal, state inspector, or designated code official shall have the remainder of the tolled 30 day period plus an additional five business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes or standards, with specific reference to the relevant requirements. If the state fire marshal, the proper local fire marshal, state inspector, or designated code official does not provide the second written notice within the prescribed time period, the permit shall be issued by the state fire marshal, the proper local fire marshal, state inspector, or designated code official on the next business day.

(v) If the state fire marshal, the proper local fire marshal, state inspector, or designated code official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to this chapter, the rules and regulations promulgated thereunder, or, where applicable for existing buildings, the local governing authority's appeals process or the permit applicant may submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the state fire marshal, the proper local fire marshal, state inspector, or designated code official shall have an additional five business days to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable codes or standards, with specific reference to the relevant requirements.

(I) The state fire marshal may provide for the prequalification of private professional providers who may perform plan reviews

pursuant to this subsection by rule or regulation authorized in Code Section 25-2-4. In addition, any local fire marshal, state inspector, or designated code official may provide for the prequalification of private professional providers who may perform plan reviews pursuant to this subsection; however, no additional local ordinance implementing prequalification shall become effective until notice of the proper local fire marshal, state inspector, or designated code official's intent to require prequalification and the specific requirements for prequalification have been advertised in the newspaper in which the sheriff's advertisements for that locality are published. The ordinance implementing prequalification shall provide for evaluation of the qualifications of a private professional provider only on the basis of the private professional provider's expertise with respect to the objectives of this subsection, as demonstrated by the private professional provider's experience, education, and training. Such ordinance may require a private professional provider to hold additional certifications, provided that such certifications are required by ordinance or state law for plan review personnel currently directly employed by such local governing authority.

(J) Nothing in this subsection shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers.

(K) If the state fire marshal, the proper local fire marshal, state inspector, or designated code official determines that the building construction or plans do not comply with the applicable codes or standards, the state fire marshal, the proper local fire marshal, state inspector, or designated code official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof as provided by law or rule or regulation, after giving notice and opportunity to remedy the violation, if the state fire marshal, the proper local fire marshal, state inspector, or designated code official determines that noncompliance exists with state laws, adopted codes or standards, or local ordinances, provided that:

(i) The state fire marshal, the proper local fire marshal, state inspector, or designated code official shall be available to meet with the private professional provider within two business days to resolve any dispute after issuing a stop-work order or providing notice to the applicant denying a permit or request for a certificate of occupancy or certificate of completion; and

(ii) If the state fire marshal, the proper local fire marshal, state inspector, or designated code official and the private pro-

fessional provider are unable to resolve the dispute, the matter shall be referred to the local enforcement agency's board of appeals, except as provided in Code Section 25-2-12 and appeals for those proposed buildings classified under paragraph (1) of subsection (b) of Code Section 25-2-13 or any existing building under the specific jurisdiction of the state fire marshal's office shall be made to the state fire marshal and further appeal shall be under Code Section 25-2-10.

(L) The state fire marshal, the proper local fire marshal, state inspector, local government, designated code official enforcement personnel, or agents of the governing authority shall be immune from liability to any person or party for any action or inaction by an owner of a building or by a private professional provider or its duly authorized representative in connection with building plan review services by private professional providers as provided in this subsection.

(M) Except as provided in this paragraph, no proper local fire marshal, state inspector, or designated code official shall adopt or enforce any rules, procedures, policies, or standards more stringent than those prescribed in this subsection related to private professional provider services.

(N) Nothing in this subsection shall limit the authority of the state fire marshal, the proper local fire marshal, state inspector, or designated code official to issue a stop-work order for a building project or any portion of such project, as provided by law or rule or regulation authorized pursuant to Code Section 25-2-4, after giving notice and opportunity to remedy the violation, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare.

(O) When performing building code plan reviews related to determining compliance with the Georgia State Minimum Standard Codes most recently adopted by the Department of Community Affairs, the state's minimum fire safety standards adopted by the safety fire marshal, or the state's minimum accessibility standards pursuant to Chapter 3 of Title 30, a private professional provider is subject to the disciplinary guidelines of the applicable professional licensing board with jurisdiction over such private professional provider's license or certification under Chapters 4 and 15 of Title 43, as applicable. Any complaint processing, investigation, and discipline that arise out of a private professional provider's performance of the adopted building, fire safety, or accessibility codes or standards plan review services shall be conducted by the applicable professional licensing board or as allowed by state rule or regulation. Notwithstanding any disciplin-

ary rules of the applicable professional licensing board with jurisdiction over such private professional provider's license or certification under Chapters 4 and 15 of Title 43, the state fire marshal, the proper local fire marshal, state inspector, or designated code official enforcement personnel may decline to accept building plan reviews submitted by any private professional provider who has submitted multiple reports which required revisions due to negligence, noncompliance, or deficiencies.

(b) A complete set of approved plans and specifications shall be maintained on the construction site, and construction shall proceed in compliance with the minimum fire safety standards under which such plans and specifications were approved. The owner of any such building or structure or his authorized representative shall notify the state fire marshal, the proper local fire marshal, or state inspector upon completion of approximately 80 percent of the construction thereof and shall apply for a certificate of occupancy when construction of such building or structure is completed.

(c) Every building or structure which comes under classification in paragraph (1) of subsection (b) of Code Section 25-2-13 and which comes under the jurisdiction of the office of the Commissioner pursuant to Code Section 25-2-12 shall have a certificate of occupancy issued by the state fire marshal, the proper local fire marshal, or the state inspector before such building or structure may be occupied. Such certificates of occupancy shall be issued for each business establishment within the building, shall carry a charge in the amount provided in Code Section 25-2-4.1, shall state the occupant load for such business establishment or building, shall be posted in a prominent location within such business establishment or building, and shall run for the life of the building, except as provided in subsection (d) of this Code section.

(d) For purposes of this chapter, any existing building or structure listed in paragraph (1) of subsection (b) of Code Section 25-2-13 and which comes under the jurisdiction of the office of the Commissioner pursuant to Code Section 25-2-12 shall be deemed to be a proposed building in the event such building or structure is subject to substantial renovation, a fire or other hazard of serious consequence, or a change in the classification of occupancy. For purposes of this subsection, the term "substantial renovation" means any construction project involving exits or internal features of such building or structure costing more than the building's or structure's assessed value according to county tax records at the time of such renovation.

(e) In cases where the governing authority of a municipality which is enforcing the fire safety standards pursuant to subsection (a) of Code Section 25-2-12 contracts with the office of the Commissioner for the enforcement of fire safety standards, the office of the Commissioner

shall not charge such municipality fees in excess of those charged in this Code section. (Ga. L. 1949, p. 1057, § 9; Ga. L. 1967, p. 619, § 2; Ga. L. 1981, p. 1779, § 7; Ga. L. 1982, p. 3, § 25; Ga. L. 1982, p. 479, §§ 3, 6; Ga. L. 1992, p. 2186, § 5; Ga. L. 1992, p. 2725, § 5; Ga. L. 2006, p. 506, § 2/HB 1385.)

The 2006 amendment, effective January 1, 2007, designated the previously existing provisions of subsection (a) as paragraph (a)(1); and added paragraph (a)(2).

25-2-17. Regulation of explosives.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 10A Am. Jur. Pleading and Practice Forms, Explosions and Explosives, § 2.

25-2-20. Licensing of traveling carnivals, circuses, and other exhibits.

All traveling motion picture shows, carnivals, and circuses shall obtain a fire prevention regulatory license from the state fire marshal based upon compliance with this chapter, as set forth in rules and regulations promulgated by the Commissioner. The fee for the license shall be $150.00 for each calendar year or part thereof, payable to the state fire marshal, who shall pay the same into the state treasury. (Ga. L. 1949, p. 1057, § 18; Ga. L. 2010, p. 9, § 1-50.1/HB 1055.)

The 2010 amendment, effective May 12, 2010, substituted "$150.00" for "$100.00" in the middle of the second sentence.

25-2-33. Release of fire loss information by insurers on request by state or local official; immunity for furnishing of information; confidentiality of information received; testimony by officials in action against insurer.

(a) The state fire marshal, any deputy designated by the state fire marshal, the director of the Georgia Bureau of Investigation or the chief of a fire department of any municipal corporation or county where a fire department is established may request any insurance company investigating a fire loss of real or personal property to release any information in its possession relative to that loss. The company shall release the information to and cooperate with any official authorized to request such information pursuant to this Code section. The information to be released shall include, but is not limited to:

(1) Any insurance policy relevant to the fire loss under investigation and any application for such a policy;

(2) Policy premium payment records on the policy, to the extent available;

(3) Any history of previous claims made by the insured for fire loss with the reporting carrier; and

(4) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other relevant evidence.

(b) If an insurance company has reason to suspect that a fire loss to its insured's real or personal property was caused by incendiary means, the company shall notify the state fire marshal and furnish him with all relevant material acquired by the company during its investigation of the fire loss. The insurer shall also cooperate with and take such action as may be requested of it by the state fire marshal's office or by any law enforcement agency of competent jurisdiction. The company shall also permit any person to inspect its records pertaining to the policy and to the loss if the person is authorized to do so by law or by an appropriate order of a superior court of competent jurisdiction.

(c) In the absence of fraud or malice, no insurance company or person who furnishes information on its behalf shall be liable for damages in a civil action or subject to criminal prosecution for any oral or written statement made or any other action taken which is necessary to supply information required pursuant to this Code section.

(d) The officials and departmental and agency personnel receiving any information furnished pursuant to this Code section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding, provided that nothing contained in this Code section shall be deemed to prohibit representatives of the state fire marshal's office or other authorized law enforcement officials from discussing such matters with other agency or departmental personnel or with other law enforcement officials or from releasing or disclosing any such information during the conduct of their investigation, if the release or disclosure is necessary to enable them to conduct their investigation in an orderly and efficient manner; provided, further, that nothing contained in this Code section shall prohibit an insurance company which furnishes information to an authorized agency or agencies pursuant to this Code section from having the right to request relevant information and receive, within a reasonable time not to exceed 30 days, the information requested.

(e) Any official referred to in subsection (a) of this Code section may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action against an insurance company for the fire loss in which any person seeks recovery under a policy.

(f)(1) No person shall purposely refuse to release any information requested pursuant to subsection (a) of this Code section.

(2) No person shall purposely refuse to notify the state fire marshal of a fire loss required to be reported pursuant to subsection (b) of this Code section.

(3) No person shall purposely refuse to supply the state fire marshal with pertinent information required to be furnished pursuant to subsection (b) of this Code section.

(4) No person shall purposely fail to hold in confidence information required to be held in confidence by subsection (d) of this Code section.

(g) Any person willfully violating this Code section shall be guilty of a misdemeanor. (Ga. L. 1977, p. 1232, § 1; Ga. L. 1981, p. 825, § 1; Ga. L. 1982, p. 3, § 25; Ga. L. 2005, p. 599, § 7/SB 146.)

The 2005 amendment, effective July 1, 2005, deleted "of investigation" following "director" in subsection (a).

25-2-38.1. Sovereign immunity; effect of this chapter on legal duties of property owners and lessees.

JUDICIAL DECISIONS

Application to city inspector performing a power reconnect inspection. — Neither O.C.G.A. § 8-2-222 nor O.C.G.A. § 25-2-38.1 operated to relieve a city inspector from liability for failure to properly inspect a mobile home prior to authorizing the connection of electrical power to the home because there was no evidence that the inspector conducted an inspection of the mobile home pursuant to the Uniform Act for the Application of Building and Fire Related Codes to Existing Buildings or the Minimum Fire Safety Standards Code. Vann v. Finley, 313 Ga. App. 153, 721 S.E.2d 156 (2011).

25-2-40. Smoke detectors required in new dwellings and dwelling units; exceptions.

(a)(1) Except as otherwise provided in subsection (f) of this Code section, on and after July 1, 1987, every new dwelling and every new dwelling unit within an apartment, house, condominium, and townhouse and every motel, hotel, and dormitory shall be provided with an approved listed smoke detector installed in accordance with the manufacturer's recommendations and listing.

(2) On and after July 1, 1994, every dwelling and every dwelling unit within an apartment, house, condominium, and townhouse and every motel, hotel, and dormitory which was constructed prior to July 1, 1987, shall have installed an approved battery operated smoke

detector which shall be maintained in good working order unless any such building is otherwise required to have a smoke detector system pursuant to Code Section 25-2-13.

(3) On and after July 1, 2001, every patient sleeping room of every nursing home shall be provided with no less than an approved listed battery operated single station smoke detector installed in accordance with their listing. Such detectors shall be maintained in good working order by the operator of such nursing home. This paragraph shall not apply to nursing homes equipped with automatic sprinkler systems.

(b) In dwellings, dwelling units, and other facilities listed in subsection (a) of this Code section, a smoke detector shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each group of rooms used for sleeping purposes. Where the dwelling or dwelling unit contains more than one story, detectors are required on each story including cellars and basements, but not including uninhabitable attics; provided, however, that hotels and motels which are protected throughout by an approved supervised automatic sprinkler system installed in accordance with the rules and regulations of the Commissioner shall be exempt from the requirement to install smoke detectors in interior corridors but shall be subject to all other applicable requirements imposed under Code Section 25-2-13.

(c) In dwellings, dwelling units, and other facilities listed in paragraph (1) of subsection (a) of this Code section with split levels, a smoke detector need be installed only on the upper level, provided the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector is required on each level. Such detectors shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping areas.

(d) Detectors shall be listed and meet the installation requirements of NFPA 72. In addition, a one and one-half hour emergency power supply source is required on all detection systems required by this chapter and permitted after April 1, 1992, except where battery operated smoke detectors are allowed.

(e) Any complete automatic fire alarm system using automatic smoke detectors shall be installed in accordance with NFPA 72.

(f)(1) The provisions of this Code section may be enforced by local building and fire code officials in the case of residential buildings which are not covered by Code Section 25-2-13; provided, however, that this Code section shall not establish a special duty on said officials to inspect such residential facilities for compliance with this Code section; provided, further, that inspections shall not be conducted for the purpose of determining compliance with this Code

section absent reasonable cause to suspect other building or fire code violations. The jurisdiction enforcing this Code section shall retain any fines collected pursuant to this subsection.

(2) Any occupant who fails to maintain a smoke detector in a dwelling, dwelling unit, or other facility, other than a nursing home, listed in subsection (a) of this Code section in good working order as required in this Code section shall be subject to a maximum fine of $25.00, provided that a warning shall be issued for a first violation.

(3) Any operator of a nursing home who fails to install and maintain the smoke detectors required under paragraph (3) of subsection (a) of this Code section shall be sanctioned in accordance with Code Section 31-2-8.

(g) Failure to maintain a smoke detector in good working order in a dwelling, dwelling unit, or other facility listed in subsection (a) of this Code section in violation of this Code section shall not be considered evidence of negligence, shall not be considered by the court on any question of liability of any person, corporation, or insurer, shall not be any basis for cancellation of coverage or increase in insurance rates, and shall not diminish any recovery for damages arising out of the ownership, maintenance, or occupancy of such dwelling, dwelling unit, or other facility listed in subsection (a) of this Code section.

(h) The Safety Fire Commissioner is authorized and encouraged to inform the public through public service announcements of the availability of a limited number of battery operated smoke detectors which may be obtained by persons in need without charge from the office of the Safety Fire Commissioner or local fire departments. (Code 1981, § 25-2-40, enacted by Ga. L. 1987, p. 989, § 1; Ga. L. 1992, p. 2186, § 12; Ga. L. 1994, p. 1235, § 1; Ga. L. 2001, p. 860, § 1; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Code Section 31-2-11" for "Code Section 31-2-6" at the end of paragraph (f)(3).

The 2011 amendment, effective July 1, 2011, substituted "Code Section 31-2-8" for "Code Section 31-2-11" at the end of paragraph (f)(3).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Failure to maintain smoke detectors.

Summary judgment was properly entered for a landlord and a property manager (appellees) in a negligence suit filed by an injured party as appellees complied with state law as to the installation of smoke detectors contained in O.C.G.A. § 25-2-40(a)(2), and as evidence of any failure to maintain the detectors was inadmissible under O.C.G.A. § 25-2-40(g); as O.C.G.A. § 25-2-40(a)(2) was more spe-

cific, it governed over any conflicting statutory or common law duty of care, such as those contained in O.C.G.A. §§ 44-7-13 and 51-3-1, and as O.C.G.A. § 25-2-40(g) was enacted more recently than the older statutes, it controlled. Hill v. Tschannen, 264 Ga. App. 288, 590 S.E.2d 133 (2003).

Since the jury was not required to believe testimony that a property owner had installed smoke detectors in the owner's rental property, and other testimony authorized the jury's finding that the owner breached the duty under O.C.G.A. § 25-2-40 to install smoke detectors, O.C.G.A. § 44-7-14 did not insulate the owner from liability for the wrongful death of tenants in a fire. Gordon v. Fleeman, 298 Ga. App. 662, 680 S.E.2d 684 (2009).

CHAPTER 3

LOCAL FIRE DEPARTMENTS GENERALLY

ARTICLE 1

GENERAL PROVISIONS

25-3-6. Effect of article on powers and duties of other officials and departments.

This article shall not affect the duties, powers, or responsibilities of the Safety Fire Commissioner, the state fire marshal, the sheriff's office, the Department of Public Safety, local law enforcement agencies, the Department of Agriculture, the Department of Natural Resources, the State Forestry Commission, the Department of Transportation, the Department of Defense, or the Department of Public Health. (Ga. L. 1980, p. 1395, § 6; Ga. L. 1984, p. 1000, § 1; Ga. L. 1994, p. 1758, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 775, § 25/HB 942.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" at the end of this Code section.

The 2011 amendment, effective July

1, 2011, substituted "Department of Public Health" for "Department of Community Health" at the end of this Code section.

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, substituted "the State Forestry Commission" for "the Georgia Forestry Commission" in this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

ARTICLE 2

MINIMUM REQUIREMENTS

25-3-23. General requirements; equipment and clothing; insurance.

(a) Except as otherwise provided in subsection (c) of this Code section, in order to be legally organized:

(1) A fire department shall comply with the following requirements:

(A) Be established to provide fire and other emergency and nonemergency services in accordance with standards specified solely by the Georgia Firefighter Standards and Training Council and the applicable local government;

(B) Be capable of providing fire protection 24 hours a day, 365 days per year;

(C) Be responsible for a defined area of operations depicted on a map located at the fire station, which area of operations shall have been approved and designated by the governing authority of the applicable county, municipality, or other political subdivision in the case of any county, municipal, or volunteer fire department; and

(D) Be staffed with a sufficient number of full-time, part-time, or volunteer firefighters who have successfully completed basic firefighter training as specified by the Georgia Firefighter Standards and Training Council; and

(2) A fire department shall possess the following items of approved equipment and protective clothing:

(A) A minimum of one fully equipped, operable pumper with a capacity of at least 750 GPM at 150 PSI and a tank capacity of a minimum of 250 gallons; provided, however, that previously approved fire apparatus which does not meet such minimum standards may be used in lieu of the minimum required pumper until replaced by the local authority;

(B) A minimum of equipment, appliances, adapters, and accessories necessary to perform and carry out the duties and responsi-

bilities of a fire department set forth in Code Sections 25-3-1 and 25-3-2 as approved by the Georgia Firefighter Standards and Training Council;

(C) A minimum of two approved self-contained breathing apparatus for each pumping apparatus as approved by the Georgia Firefighter Standards and Training Council; and

(D) A minimum issue of sufficient personal protective clothing to permit each member to perform safely the duties of a firefighter.

(b) A legally organized fire department shall purchase and maintain sufficient insurance coverage on each member of the fire department to pay claims for injuries sustained en route to, during, and returning from fire calls or other emergencies and disasters and scheduled training sessions.

(c) On and after July 1, 1998, the Georgia Firefighter Standards and Training Council shall be authorized, by rules and regulations, to establish and modify minimum requirements for all fire departments operating in this state, provided that such requirements are equal to or exceed the requirements provided in subsections (a) and (b) of this Code section. (Code 1981, § 25-3-23, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1985, p. 149, § 25; Ga. L. 1990, p. 354, § 1; Ga. L. 1995, p. 341, § 3; Ga. L. 1998, p. 560, § 2; Ga. L. 2003, p. 888, § 2; Ga. L. 2005, p. 60, § 25/HB 95.)

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, substituted "subsection (c)" for "subsection (d)" in subsection (a).

25-3-25. Suspension or revocation of certificate of compliance; hearing by aggrieved departments; enforcement of suspensions or revocations.

(a) The certificate of compliance issued by the council shall be subject to suspension or revocation by the council at any time it receives satisfactory evidence that the fire department is not maintaining sufficient personnel, equipment, or insurance required by Code Section 25-3-23 or the rules and regulations of the Georgia Firefighter Standards and Training Council pursuant to subsection (c) of Code Section 25-3-23.

(b) The chief administrative officer of any fire department aggrieved by a decision of the council under subsection (a) of this Code section may, within 30 days of the date of such decision, request a hearing on the matter before the council. Following a hearing before the council, the chief administrative officer of the fire department affected shall be served with a written decision of the council announcing whether the

certificate of compliance shall remain revoked or suspended or whether it shall be reinstated.

(c) The council shall not suspend or revoke any certificate of compliance for failure to meet firefighter training requirements when such failure was due to unavailability of required training from or through the Georgia Fire Academy.

(d) The council may refer suspensions or revocations to the Attorney General for enforcement. Upon referral from the council, the Attorney General may bring a civil action to enjoin any organization which is not in compliance with the applicable requirements of this chapter from performing any or all firefighting functions until such requirements are met by such organization. (Code 1981, § 25-3-25, enacted by Ga. L. 1984, p. 1000, § 3; Ga. L. 1995, p. 341, § 5; Ga. L. 1998, p. 560, § 3; Ga. L. 2003, p. 888, § 3; Ga. L. 2005, p. 60, § 25/HB 95.)

The 2005 amendment, effective April 7, 2005, part of an Act to revise, modernize, and correct the Code, substituted "subsection (c) of Code Section 25-3-23" for "subsection (d) of Code Section 25-3-23" in subsection (a).

CHAPTER 4

FIREFIGHTER STANDARDS AND TRAINING

Article 1

General Provisions

Article 2

Airport Firefighters

ARTICLE 1

GENERAL PROVISIONS

25-4-2. Definitions.

As used in this chapter, the term:

(1) "Airport" means any airport located in this state which has regularly scheduled commercial air carrier service or commuter

airline service as required for certification under Section 139.49 of the Federal Aviation Administration regulations.

(2) "Airport firefighter" means any person assigned to any airport located in this state who performs the duties of aircraft fire fighting or rescue.

(3) "Candidate" means a prospective firefighter who has not yet been certified by the council as having met the requirements of this chapter.

(4) "Certified firefighter" or "state certified firefighter" means any firefighter who has been certified by the council as having met the requirements of this chapter.

(5) "Council" means the Georgia Firefighter Standards and Training Council.

(5.1) "Fire department" shall have the same meaning as provided in Code Section 25-3-21.

(6) "Firefighter" means a trained individual who is a full-time employee, part-time employee, or volunteer for a municipal, county, state, or private incorporated fire department and as such has duties of responding to mitigate a variety of emergency and nonemergency situations where life, property, or the environment is at risk, which may include without limitation fire suppression; fire prevention activities; emergency medical services; hazardous materials response and preparedness; technical rescue operations; search and rescue; disaster management and preparedness; community service activities; response to civil disturbances and terrorism incidents; nonemergency functions including training, preplanning, communications, maintenance, and physical conditioning; and other related emergency and nonemergency duties as may be assigned or required; provided, however, that a firefighter's assignments may vary based on geographic, climatic, and demographic conditions or other factors including training, experience, and ability.

(7) "Full-time" means employed for compensation on a basis of at least 40 hours per week by any municipal, county, state, or private incorporated fire department.

(8) "Part-time" means employed for compensation on less than a full-time basis by any municipal, county, state, or private incorporated fire department.

(9) "Volunteer" means not employed for compensation by but appointed and regularly enrolled to serve as a firefighter for any municipal, county, state, or private incorporated fire department. (Ga. L. 1971, p. 693, § 2; Ga. L. 1987, p. 373, § 1; Ga. L. 2003, p. 888, § 4; Ga. L. 2005, p. 619, § 1/SB 308; Ga. L. 2008, p. 243, § 2/SB 414.)

The 2005 amendment, effective July 1, 2005, added present paragraphs (1) and (2) and redesignated former paragraphs (1) through (7) as present paragraphs (3) through (9), respectively.

The 2008 amendment, effective July 1, 2008, added paragraph (5.1).

Editor's notes. — Ga. L. 2008, p. 243, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the '2008 Georgia Firefighter Standards and Training Council Act.'"

25-4-3. Georgia Firefighter Standards and Training Council — Establishment and organization; advisory committee; expenses and allowances.

(a) The Georgia Firefighter Standards and Training Council is established. The council shall be composed of eleven members, one of whom shall be the Safety Fire Commissioner or the designated representative of the Safety Fire Commissioner. Two members shall be appointed by the Lieutenant Governor. Two members shall be appointed by the Speaker of the House of Representatives. The remaining six members shall be appointed by the Governor subject to the following requirements:

(1) One member shall be a member of the governing authority of a county;

(2) One member shall be a member of the governing authority of a municipality;

(3) One member shall be a city or county manager;

(4) One member shall be the chief of a county or municipal fire department; and

(5) Two members shall be state certified firefighter training officers.

(b) The members of the council appointed by the Governor pursuant to subsection (a) of this Code section shall be appointed at the sole discretion of the Governor. However, the Governor may consider for appointment to the council persons suggested for membership thereon as follows:

(1) The Association County Commissioners of Georgia may suggest the names of three persons for each appointment pursuant to paragraph (1) of subsection (a) of this Code section;

(2) The Georgia Municipal Association may suggest the names of three persons for each appointment pursuant to paragraph (2) of subsection (a) of this Code section;

(3) The Georgia City and County Management Association may suggest the names of three persons for each appointment pursuant to paragraph (3) of subsection (a) of this Code section;

(4) The Georgia Association of Fire Chiefs may suggest the names of three persons for each appointment pursuant to paragraph (4) of subsection (a) of this Code section; and

(5) The Executive Board of the Georgia State Firemen's Association may suggest the names of three persons for each appointment pursuant to paragraph (5) of subsection (a) of this Code section.

(c)(1) The first members of the council appointed by the Governor pursuant to subsection (a) of this Code section shall be appointed to take office on January 1, 1986. The two members appointed pursuant to paragraphs (1) and (2) of subsection (a) of this Code section shall be appointed for initial terms of one year, the two members appointed pursuant to paragraphs (3) and (4) of subsection (a) of this Code section shall be appointed for initial terms of two years, and the two members appointed pursuant to paragraph (5) of subsection (a) of this Code section shall be appointed for initial terms of three years. Thereafter, successors shall be appointed for terms of three years as the respective terms of office expire.

(2) The members appointed by the Lieutenant Governor and the members appointed by the Speaker of the House of Representatives shall each serve for terms concurrent with terms of members of the General Assembly.

(3) All members shall serve until their successors are appointed and qualified. In the event of a vacancy in the membership of the council for any reason, including ceasing to hold an office or position required for membership on the council, the Governor shall fill such vacancy for the unexpired term; except that a vacancy in either of those members of the council appointed by the Lieutenant Governor or the Speaker of the House of Representatives shall be filled for the remainder of the unexpired term in the same manner as the original appointment. In order for the Governor to consider the names of persons suggested for membership on the council pursuant to subsection (b) of this Code section, such names must be submitted to the Governor by the respective organizations at least 60 days but not more than 90 days prior to the expiration of the respective terms of office or prior to the appointment of the initial members of the council who take office on January 1, 1986. The Governor shall be authorized, but not required, to request the appropriate organization designated in subsection (b) of this Code section to suggest the names of three persons for the Governor's consideration in making an appointment to fill a vacancy.

(d) At the first regular meeting of the council held in each even-numbered year, the council shall elect a chairperson and such other officers from its own membership as it deems necessary to serve

until successors are elected by the council as provided in this subsection.

(e) The council may, from time to time, designate an advisory committee of not more than three members to assist and advise the council in carrying out its duties under this chapter. The members of any such advisory committee shall serve at the pleasure of the council.

(f) Each member of the council and each member of an advisory committee of the council, in carrying out their official duties, shall be entitled to receive the same expense and mileage allowance authorized for members of professional licensing boards by subsection (f) of Code Section 43-1-2. The funds for such expenses and allowances shall be paid from funds appropriated or available to the Department of Public Safety. (Ga. L. 1971, p. 693, § 3; Ga. L. 1976, p. 1725, § 9; Ga. L. 1985, p. 1493, § 2; Ga. L. 1986, p. 10, § 25; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 888, § 5; Ga. L. 2004, p. 631, § 25.)

The 2004 amendment, effective July 1, 2004, part of an Act to revise, modernize and correct the Code, substituted "members appointed" for "member appointed" twice in paragraph (c)(2).

25-4-6. Georgia Firefighter Standards and Training Council — Meetings; quorum; annual report.

The business of the council shall be conducted in the following manner:

(1) The council shall hold at least two regular meetings each year at the call of the chairperson or upon the written request of six members of the council. Six members of the council shall constitute a quorum. The council shall adopt such rules for the transaction of its business as it shall desire and may appoint such committees as it considers necessary to carry out its business and duties; and

(2) The council shall make an annual report of its activities to the Governor and to the General Assembly and shall include in the report its recommendations for appropriate legislation. The council shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Ga. L. 1971, p. 693, § 5; Ga. L. 1985, p. 1493, § 3; Ga. L. 2005, p. 1036, § 21/SB 49; Ga. L. 2008, p. 243, § 3/SB 414; Ga. L. 2010, p. 878, § 25/HB 1387.)

The 2005 amendment, effective July 1, 2005, added the second sentence in paragraph (2).

The 2008 amendment, effective July 1, 2008, in paragraph (1), in the first sentence, substituted "chairperson" for "chairman" near the middle and substituted "six members" for "four members"

near the end; substituted "Six" for "Four" at the beginning of the second sentence; and added the last sentence.

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, substituted "; and" for a period at the end of paragraph (1).

Editor's notes. — Ga. L. 2008, p. 243, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the '2008 Georgia Firefighter Standards and Training Council Act.'"

25-4-7. Georgia Firefighter Standards and Training Council — Functions and powers.

The council is vested with the following functions and powers:

(1) To promulgate rules and regulations for the administration of the council;

(2) To provide rules of procedure for its internal management and control;

(3) To enter into contracts or do such things as may be necessary and incidental to the administration of its authority pursuant to this chapter;

(4) To establish uniform minimum standards for the employment and training of full-time, part-time, or volunteer firefighters, airport firefighters, fire and life safety educators, fire inspectors, and fire investigators, including qualifications, certifications, recertifications, decertifications, and probations for certified individuals and suspensions for noncertified individuals, and requirements, which are consistent with this chapter;

(5) To establish minimum curriculum requirements for schools operated by or for any employing agency for the specific purpose of training firefighter recruits or full-time, part-time, or volunteer firefighters, airport firefighters, fire and life safety educators, fire inspectors, and fire investigators;

(6) To approve institutions and facilities for school operation by or for any employing agency for the specific purpose of training firefighters and firefighter recruits, including airport firefighters;

(7) To make or support studies on any aspect of fire-fighting education and training or recruitment;

(8) To make recommendations concerning any matter within its purview;

(9) To establish basic firefighter training requirements for full-time, part-time, and volunteer firefighters, including airport firefighters;

(10) To certify any person satisfactorily complying with the training program established in accordance with paragraph (9) of this Code section and the qualifications for employment covered in this chapter; and

(11) To issue a certificate to any person who has received training in another state or who has received training as a federal firefighter by the United States government, when the council has determined that the training was at least equivalent to that required by the council for approved firefighter education and training programs in this state and when the person has satisfactorily complied with all other requirements of this chapter. (Ga. L. 1971, p. 693, § 6; Ga. L. 2003, p. 888, § 6; Ga. L. 2005, p. 619, § 2/SB 308; Ga. L. 2008, p. 243, § 4/SB 414.)

The 2005 amendment, effective July 1, 2005, inserted in paragraph (4), "airport firefighters," following "or volunteer firefighters" and inserted", certifications, recertifications, decertifications," following "including qualifications"; inserted "airport firefighters," following "or volunteer firefighters," in paragraph (5); inserted ", including airport firefighters;" at the end of paragraphs (6) and (9); and in paragraph (11), inserted "or who has received training as a federal firefighter by the United States government" following "who has received training in another state".

The 2008 amendment, effective July 1, 2008, inserted "and probations for certified individuals and suspensions for noncertified individuals," near the end of paragraph (4).

Editor's notes. — Ga. L. 2008, p. 243, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the '2008 Georgia Firefighter Standards and Training Council Act.'"

25-4-8. Qualifications of firefighters generally.

(a) Except as provided in Code Section 25-4-12, any person employed or certified as a firefighter shall:

(1) Be at least 18 years of age;

(2) Not have been convicted of a felony in any jurisdiction or of a crime which if committed in this state would constitute a felony under the laws of this state within ten years prior to employment, provided that a person who has been convicted of a felony more than five but less than ten years prior to employment may be certified and employed as a firefighter when the person has:

(A) Successfully completed a training program following the Georgia Fire Academy curriculum and sponsored by the Department of Corrections;

(B) Been recommended to a fire department by the proper authorities at the institution at which the training program was undertaken; and

(C) Met all other requirements as set forth in this chapter.

The council shall be the final authority with respect to authorizing employment and certification of a person who has been convicted of a felony more than five but less than ten years prior to seeking employment when the person is seeking employment as a firefighter for any municipal, county, or state fire department which employs three or more firefighters who work a minimum of 40 hours per week and has the responsibility of preventing and suppressing fires, protecting life and property, and enforcing municipal, county, and state codes, as well as enforcing any law pertaining to the prevention and control of fires;

(3) Have a good moral character as determined by investigation under procedure approved by the council;

(4) Be fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record;

(5) Be in good physical condition as determined by a medical examination and successfully pass the minimum physical agility requirements as established by the council; and

(6) Possess or achieve within 12 months after employment a high school diploma or a general education development equivalency.

(b) For the purposes of this Code section, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had or shall have received a certificate of good conduct granted by the State Board of Pardons and Paroles pursuant to the provisions of law to remove a disability under law because of such conviction. Any person convicted of a felony while he or she is a certified firefighter shall have his or her certification revoked.

(c)(1) For the purposes of making determinations relating to eligibility under this Code section, a local fire department shall provide information relative to prospective employees to the local law enforcement agency and a state fire department shall provide information relative to prospective employees to a state law enforcement agency. Such local or state law enforcement agency shall be authorized to obtain conviction data with respect to such prospective employees of a local or state fire department as authorized in this

subsection. The local or state law enforcement agency shall submit to the Georgia Crime Information Center two complete sets of fingerprints of the applicant for appointment or employment, the required records search fees, and such other information as may be required. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the local or state law enforcement agency in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding. All conviction data received by the local or state law enforcement agency shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except as provided in this subsection and except to any person or agency which otherwise has a legal right to inspect the employment file. All such records shall be maintained by the local or state law enforcement agency pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, "conviction data" means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(2) The local or state law enforcement agency shall provide to the chief of the fire department which requested information on an applicant any criminal data indicating that the applicant was convicted of a felony. Such information may be provided to the council. The provisions of paragraph (1) of this subsection relating to privileged information and records of conviction data shall apply to any information provided by a law enforcement agency to a fire department. (Ga. L. 1971, p. 693, § 7; Ga. L. 1977, p. 1224, § 7; Ga. L. 1980, p. 601, § 1; Ga. L. 1982, p. 989, §§ 1, 2; Ga. L. 1983, p. 3, § 18; Ga. L. 1985, p. 283, § 1; Ga. L. 1995, p. 325, § 1; Ga. L. 2008, p. 243, § 5/SB 414; Ga. L. 2012, p. 83, § 1/HB 247.)

The 2008 amendment, effective July 1, 2008, deleted former subparagraph (a)(2)(B), which read: "Earned and possesses a first class firefighter diploma;" and redesignated former subparagraphs (a)(2)(C) and (a)(2)(D) as present subparagraphs (a)(2)(B) and (a)(2)(C), respectively.

The 2012 amendment, effective July 1, 2012, in subsection (b), deleted "of paragraph (2) of subsection (a)" preceding "of this Code section" near the beginning of the first sentence, and added the last sentence; and deleted "paragraph (2) of subsection (a) of" preceding "this Code section" in the first sentence of paragraph (c)(1).

Editor's notes. — Ga. L. 2008, p. 243, § 1, not codified by the General Assembly, provides: "This Act shall be known and

may be cited as the '2008 Georgia Firefighter Standards and Training Council Act.'"

25-4-9. Basic firefighter training course; transfer of certification.

(a) Full-time, part-time, and volunteer firefighters, including airport firefighters, shall successfully complete a basic training course. The council shall determine the course content, number of hours, and all other matters relative to basic firefighter training, including airport rescue firefighter training. Upon satisfactory completion of such basic training, a firefighter shall be issued a certificate of completion evidencing the same. Each firefighter shall be required to successfully complete such basic training course within 12 months after being employed or appointed as a firefighter or, in the case of airport firefighters, within such time period as the council may prescribe by rule or regulation.

(b) A firefighter certified by the council may, upon termination of employment from any fire department and upon agreement with a subsequently employing fire department, transfer such certification to the employing fire department.

(c) Notwithstanding the provisions of subsection (b) of this Code section, any local fire department may refuse to accept the transfer of previously acquired certification and may require any newly employed firefighter to complete the basic training course provided for in subsection (a) of this Code section. (Ga. L. 1971, p. 693, § 8; Ga. L. 1985, p. 1493, § 4; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11; Ga. L. 2003, p. 888, § 8; Ga. L. 2005, p. 619, § 3/SB 308.)

The 2005 amendment, effective July 1, 2005, in subsection (a), inserted ", including airport firefighters," in the first sentence, inserted ", including airport rescue firefighter training", in the second sentence, and added "or, in the case of airport firefighters, within such time period as the council may prescribe by rule or regulation" at the end of the last sentence.

JUDICIAL DECISIONS

Cited in Huff v. Dekalb County, 516 F.3d 1273 (11th Cir. 2008).

ARTICLE 2

AIRPORT FIREFIGHTERS

25-4-30 and 25-4-31.

Repealed by Ga. L. 2005, p. 619, § 4/SB 308, effective July 1, 2005.

Editor's notes. — This article, which consisted of Code Sections 25-4-30 and 25-4-31, was based on Ga. L. 1980, p. 1242, §§ 1, 2; Ga. L. 1985, p. 1493, § 5; Ga. L. 1995, p. 341, § 7.

CHAPTER 8

REGULATION OF BLASTING OPERATIONS GENERALLY

25-8-1. Short title.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 10A Am. Jur. Pleading and Practice Forms, Explosions and Explosives, § 2.

CHAPTER 9

BLASTING OR EXCAVATING NEAR UTILITY FACILITIES

25-9-1. Short title.

Law reviews. — For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

JUDICIAL DECISIONS

Cited in Perry v. Georgia Power Co., 278 Ga. App. 759, 629 S.E.2d 588 (2006).

25-9-2. Purpose of chapter.

The purpose of this chapter is to protect the public from physical harm, prevent injury to persons and property, and prevent interruptions of utility service resulting from damage to utility facilities and sewer laterals caused by blasting or excavating operations by providing a method whereby the location of utility facilities and sewer laterals will be made known to persons planning to engage in blasting or excavating operations so that such persons may observe proper precautions with respect to such utility facilities and sewer laterals. (Ga. L. 1969, p. 50, § 1; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Code 1981, § 25-9-2, as redesignated by Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 1/SB 274.)

The 2005 amendment, effective July 1, 2005, inserted "and sewer laterals" in three places.

25-9-3. Definitions.

As used in this chapter, the term:

(1) "Abandoned utility facility" means a utility facility taken out of service by a facility owner or operator on or after January 1, 2001.

(2) "Blasting" means any operation by which the level or grade of land is changed or by which earth, rock, buildings, structures, or other masses or materials are rended, torn, demolished, moved, or removed by the detonation of dynamite or any other explosive agent.

(3) "Business days" means Monday through Friday, excluding the following holidays: New Year's Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and Christmas Day. Any such holiday that falls on a Saturday shall be observed on the preceding Friday. Any such holiday that falls on a Sunday shall be observed on the following Monday.

(4) "Business hours" means the time from 7:00 A.M. to 4:30 P.M. local time on business days.

(5) "Commission" means the Public Service Commission.

(6) "Corporation" means any corporation; municipal corporation; county; authority; joint-stock company; partnership; association;

business trust; cooperative; organized group of persons, whether incorporated or not; or receiver or receivers or trustee or trustees of any of the foregoing.

(7) "Damage" means any impact or exposure that results in the need to repair a utility facility or sewer lateral due to the weakening or the partial or complete destruction of the facility or sewer lateral including, but not limited to, the protective coating, lateral support, cathodic protection, or the housing for the line, device, sewer lateral, or facility.

(8) "Design locate request" means a communication to the utilities protection center in which a request for locating existing utility facilities for bidding, predesign, or advance planning purposes is made. A design locate request may not be used for excavation purposes.

(9) "Designate" means to stake or mark on the surface of the tract or parcel of land the location of a utility facility or sewer lateral.

(10) "Emergency" means a sudden or unforeseen occurrence involving a clear and imminent danger to life, health, or property; the interruption of utility services; or repairs to transportation facilities that require immediate action.

(11) "Emergency notice" means a communication to the utilities protection center to alert the involved facility owners or operators of the need to excavate due to an emergency that requires immediate excavation.

(12) "Excavating" means any operation by which the level or grade of land is changed or earth, rock, or other material below existing grade is moved and includes, without limitation, grading, trenching, digging, ditching, augering, scraping, directional boring, and pile driving. Such term, however, does not include routine road surface scraping maintenance. "Excavating" shall not include pavement milling or pavement repair that does not exceed the depth of the existing pavement or 12 inches, whichever is less. The term shall not include other routine roadway maintenance activities carried out by road maintenance or railroad employees or contractors, provided that such activities occur entirely within the right of way of a public road, street, railroad, or highway of the state; are carried out with reasonable care so as to protect any utility facilities and sewer laterals placed in the right of way by permit; are carried out within the limits of any original excavation on the traveled way, shoulders, or drainage ditches of a public road, street, railroad, or highway, and do not exceed 18 inches in depth below the grade existing prior to such activities; and, if involving the replacement of existing structures, replace such structures in their previous locations and at their

previous depth. "Excavating" shall not include normal farming activities.

(13) "Excavator" means any person engaged in excavating or blasting as defined in this Code section.

(14) "Extraordinary circumstances" means circumstances other than normal operating conditions which exist and make it impractical or impossible for a facility owner or operator to comply with the provisions of this chapter. Such extraordinary circumstances may include, but shall not be limited to, hurricanes, tornadoes, floods, ice and snow, and acts of God.

(15) "Facility owner or operator" means any person or entity with the sole exception of a homeowner who owns, operates, or controls the operation of a utility facility.

(16) "Horizontal directional drilling" or "HDD" means a type of trenchless excavation that uses guidable boring equipment to excavate in an essentially horizontal plane without disturbing or with minimal disturbance to the ground surface.

(17) "Large project" means an excavation that involves more work to locate utility facilities than can reasonably be completed within the requirements of subsection (a) of Code Section 25-9-7.

(18) "Local governing authority" means a county, municipality, or local authority created by or pursuant to general, local, or special Act of the General Assembly, or by the Constitution of the State of Georgia. The term also includes any local authority that is created or activated by an appropriate ordinance or resolution of the governing body of a county or municipality individually or jointly with other political subdivisions of this state.

(19) "Locate request" means a communication between an excavator and the utilities protection center in which a request for locating utility facilities, sewer laterals, or both is processed.

(20) "Locator" means a person who is acting on behalf of facility owners and operators in designating the location of the utility facilities and sewer laterals of such owners and operators.

(21) "Mechanized excavating equipment" means all equipment which is powered by any motor, engine, or hydraulic or pneumatic device and which is used for excavating.

(22) "Minimally intrusive excavation methods" means methods of excavation that minimize the potential for damage to utility facilities and sewer laterals. Examples include, but are not limited to, air entrainment/vacuum extraction systems and water jet/vacuum excavation systems operated by qualified personnel and careful hand tool

usage and other methods as determined by the Public Service Commission. The term does not include the use of trenchless excavation.

(23) "Permanent marker" means a visible indication of the approximate location of a utility facility or sewer lateral that can reasonably be expected to remain in position for the life of the facility. The term includes, but is not limited to, sewer cleanouts; water meter boxes; and etching, cutting, or attaching medallions or other industry accepted surface markers to curbing, pavement, or other similar visible fixed surfaces. All permanent markers other than sewer cleanouts, water meter boxes, or any other visible component of a utility facility that establish the exact location of the facility must be placed accurately in accordance with Code Section 25-9-9 and be located within the public right of way. Sewer cleanouts, water meter boxes, or any other visible component of a utility facility that establishes the exact location of the facility must be located within ten feet of the public right of way to be considered a permanent marker.

(24) "Person" means an individual, firm, joint venture, partnership, association, local governing authority, state, or other governmental unit, authority, department, agency, or a corporation and shall include any trustee, receiver, assignee, employee, agent, or personal representative thereof.

(25) "Positive response information system" or "PRIS" means the automated information system operated and maintained by the utilities protection center at its location that allows excavators, locators, facility owners or operators, and other affected parties to determine the status of a locate request or design locate request.

(26) "Service area" means a contiguous area or territory which encompasses the distribution system or network of utility facilities by means of which a facility owner or operator provides utility service.

(27) "Sewer lateral" means an individual customer service line which transports waste water from one or more building units to a utility owned sewer facility.

(28) "Sewer system owner or operator" means the owner or operator of a sewer system. Sewer systems shall be considered to extend to the connection to the customer's facilities.

(29) "Traffic control devices" means all roadway or railroad signs, sign structures, or signals and all associated infrastructure on which the public relies for informational, regulatory, or warning messages concerning the public or railroad rights of way.

(30) "Traffic management system" means a network of traffic control devices, monitoring sensors, and personnel, with all associ-

ated communications and power services, including all system control and management centers.

(31) "Tolerance zone" means the width of the utility facility or sewer lateral plus 24 inches on either side of the outside edge of the utility facility or sewer lateral on a horizontal plane.

(32) "Trenchless excavation" means a method of excavation that uses boring equipment to excavate with minimal or no disturbance to the ground surface and includes horizontal directional drilling.

(33) "Unlocatable facility" means an underground facility that cannot be marked with reasonable accuracy using generally accepted techniques or equipment commonly used to designate utility facilities and sewer laterals. This term includes, but is not limited to, nonconductive utility facilities and sewer laterals and nonmetallic underground facilities that have no trace wires or records that indicate a specific location.

(34) "Utilities protection center" or "UPC" means the corporation or other organization formed by facility owners or operators to provide a joint notification service for the purpose of receiving advance notification from persons planning to blast or excavate and distributing such notifications to its affected facility owner or operator members.

(35) "Utility facility" means an underground or submerged conductor, pipe, or structure used or installed for use in providing electric or communications service or in carrying, providing, or gathering gas, oil or oil products, sewage, waste water, storm drainage, or water or other liquids. All utility facilities shall be considered to extend up to the connection to the customer's facilities. The term does not include traffic control devices, traffic management systems, or sewer laterals. (Ga. L. 1969, p. 50, § 2; Ga. L. 1970, p. 226, §§ 1, 2; Ga. L. 1978, p. 1659, § 1; Ga. L. 1982, p. 1577, §§ 1, 2; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 1997, p. 515, § 1; Ga. L. 1998, p. 177, § 1; Code 1981, § 25-9-3, as redesignated by Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 2/SB 274.)

The 2005 amendment, effective July 1, 2005, rewrote this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, paragraphs (33) and (34) were redesignated as paragraphs (34) and (35), respectively.

JUDICIAL DECISIONS

Violations. — When an asphalt company admitted that it had been "scraping" a site where a telephone cable was severed, and telephone company employees testified it appeared that there had been digging at the site where the cable was severed, the evidence was sufficient to support the Georgia Public Service Commission's conclusion that the company violated the Georgia Utility Facility Protec-

tion Act, O.C.G.A. § 25-9-1 et seq., by not contacting the utilities protection center to locate buried utilities before it began work, because it was engaged in "excavating," as defined by O.C.G.A. § 25-9-3(11). Douglas Asphalt Co. v. Ga. PSC, 263 Ga. App. 711, 589 S.E.2d 292 (2003).

Cited in Perry v. Georgia Power Co., 278 Ga. App. 759, 629 S.E.2d 588 (2006).

25-9-4. Design locate request and response.

(a) Any person may submit a design locate request to the UPC. Such design locate request shall:

(1) Describe the tract or parcel of land for which the design locate request has been submitted with sufficient particularity, as defined by policies developed and promulgated by the UPC, to enable the facility owner or operator to ascertain the precise tract or parcel of land involved; and

(2) State the name, address, and telephone number of the person who has submitted the design locate request, as well as the name, address, and telephone number of any other person authorized to review any records subject to inspection as provided in paragraph (3) of subsection (b) of this Code section.

(b) Within ten working days after a design locate request has been submitted to the UPC for a proposed project, the facility owner or operator shall respond by one of the following methods:

(1) Designate or cause to be designated by a locator in accordance with Code Section 25-9-9 the location of all utility facilities and sewer laterals within the area of the proposed excavation;

(2) Provide to the person submitting the design locate request the best available description of all utility facilities and sewer laterals in the area of proposed excavation, which might include drawings of utility facilities and sewer laterals already built in the area, or other facility records that are maintained by the facility owner or operator; or

(3) Allow the person submitting the design locate request or any other authorized person to inspect or copy the drawings or other records for all utility facilities and sewer laterals within the proposed area of excavation.

(c) Upon responding using any of the methods provided in subsection (b) of this Code section, the facility owner or operator shall provide the response to the UPC in accordance with UPC procedures. (Code 1981, § 25-9-4, enacted by Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 3/SB 274.)

The 2005 amendment, effective July 1, 2005, substituted "UPC" for "utilities protection center" in three places in subsections (a) and (b); in paragraph (b)(1),

inserted "or cause to be designated by a locator" following "Designate" and inserted "and sewer laterals" following "utility facilities"; inserted "and sewer laterals" following "utility facilities" in three places in paragraphs (b)(2) and (b)(3); and added subsection (c).

25-9-5. Cooperation with UPC; permanent markers for water and sewer facilities; point of contact list.

(a) Except as otherwise provided by subsection (b) of this Code section, all facility owners or operators operating or maintaining utility facilities within the state shall participate as members in and cooperate with the UPC. No duplicative center shall be established. The activities of the UPC shall be funded by all facility owners or operators.

(b) Persons who install water and sewer facilities or who own such facilities until those facilities are accepted by a local governing authority or other entity are not required to participate as members of the UPC and shall not be considered facility owners or operators. All such persons shall install and maintain permanent markers, as defined in Code Section 25-9-3, identifying all water and sewer facilities at the time of the facility installation. Notwithstanding the above, all owners or operators of water and sewer facilities that provide service from such facilities are considered facility owners or operators and shall be members of the UPC.

(c) The UPC shall maintain a list of the name, address, and telephone number of the office, department, or other source from or through which information respecting the location of utility facilities of its participating facility owners or operators may be obtained during business hours on business days. (Code 1981, § 25-9-4, enacted by Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Code 1981, § 25-9-5, as redesignated by Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 4/SB 274.)

The 2005 amendment, effective July 1, 2005, in subsection (a), in the first sentence, substituted "Except as otherwise provided by subsection (b) of this Code section, all" for "All" and inserted "UPC" for "utilities protection center", and in the last sentence, substituted "UPC" for "center" and substituted "facility owners or operators" for "utilities"; added present subsection (b); redesignated former subsection (b) as present subsection (c); and in present subsection (c), substituted "UPC" for "utilities protection center".

25-9-6. Prerequisites to blasting or excavating; marking of sites.

(a) No person shall commence, perform, or engage in blasting or in excavating with mechanized excavating equipment on any tract or parcel of land in any county in this state unless and until the person planning the blasting or excavating has given 48 hours' notice by submitting a locate request to the UPC, beginning the next business

day after such notice is provided, excluding hours during days other than business days. Any person performing excavation is responsible for being aware of all information timely entered into the PRIS prior to the commencement of excavation. If, prior to the expiration of the 48 hour waiting period, all identified facility owners or operators have responded to the locate request, and if all have indicated that their facilities are either not in conflict or have been marked, then the person planning to perform excavation or blasting shall be authorized to commence work, subject to the other requirements of this Code section, without waiting the full 48 hours. The 48 hours' notice shall not be required for excavating where minimally intrusive excavation methods are used exclusively. Any locate request received by the UPC after business hours shall be deemed to have been received by the UPC the next business day. Such locate request shall:

(1) Describe the tract or parcel of land upon which the blasting or excavation is to take place with sufficient particularity, as defined by policies developed and promulgated by the UPC, to enable the facility owner or operator to ascertain the precise tract or parcel of land involved;

(2) State the name, address, and telephone number of the person who will engage in the blasting or excavating;

(3) Describe the type of blasting or excavating to be engaged in by the person; and

(4) Designate the date upon which the blasting or excavating will commence.

(b) In the event the location upon which the blasting or excavating is to take place cannot be described with sufficient particularity to enable the facility owner or operator to ascertain the precise tract or parcel involved, the person proposing the blasting or excavating shall mark the route or boundary of the site of the proposed blasting or excavating by means of white paint, white stakes, or white flags if practical, or schedule an on-site meeting with the locator or facility owner or operator and inform the UPC, within a reasonable time, of the results of such meeting.

(c) Except as otherwise provided in this subsection, notice given pursuant to subsection (a) of this Code section shall expire 21 calendar days following the date of such notice, and no blasting or excavating undertaken pursuant to this notice shall continue after such time has expired. In the event that the blasting or excavating which is the subject of the notice given pursuant to subsection (a) of this Code section will not be completed within 21 calendar days following the date of such notice, an additional notice must be given in accordance with subsection (a) of this Code section for the locate request to remain valid.

(d) For emergencies, notice shall expire at 7:00 A.M. three business days after the notification is made to the UPC.

(e) Except for those persons submitting design locate requests, no person, including facility owners or operators, shall request marking of a site through the UPC unless excavating is scheduled to commence. In addition, no person shall make repeated requests for re-marking, unless the repeated request is required for excavating to continue or due to circumstances not reasonably within the control of such person. Any person who willfully fails to comply with this subsection shall be liable to the facility owner or operator for $100.00 or for actual costs, whichever is greater, for each repeated request for re-marking.

(f) If, subsequent to giving the notice to the UPC required by subsection (a) of this Code section, a person planning excavating determines that such work will require blasting, then such person shall promptly so notify the UPC and shall refrain from any blasting until the facility owner or operator responds within 24 hours, excluding hours during days other than business days, following receipt by the UPC of such notice.

(g) When a locate request is made in accordance with subsection (a) of this Code section, excavators other than the person planning the blasting or excavating may conduct such activity, provided that the person planning the blasting or excavating shall remain responsible for ensuring that any stakes or other markings placed in accordance with this chapter remain in place and reasonably visible until such blasting or excavating is completed; and provided, further, that such blasting or excavating is:

(1) Performed on the tract or parcel of land identified in the locate request;

(2) Performed by a person authorized by and having a contractual relationship with the person planning the blasting or excavating;

(3) The type of blasting or excavating described in the locate request; and

(4) Carried out in accordance with all other requirements of this chapter.

(h) Facility owners or operators may bill an excavator their costs for any requests for re-marking other than for re-marks with no more than five individual addresses on a single locate request. Such costs shall be documented actual costs and shall not exceed $100.00 per re-mark request. (Ga. L. 1969, p. 50, § 5; Ga. L. 1975, p. 417, § 3; Code 1981, § 25-9-5 [repealed]; Code 1981, § 25-9-6, as redesignated by Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 5/SB 274.)

The 2005 amendment, effective July 1, 2005, substituted "UPC" for "utilities protection center" throughout the Code section; in the introductory language of subsection (a), added the second, third, and fourth sentences; in subsection (b), inserted "or operator" following "facility owner"; added subsection (d); redesignated former subsections (d) through (f) as present subsections (e) through (g), respectively; in the last sentence of present subsection (e), substituted "$100.00 or for actual costs, whichever is greater, for each repeated request for re-marking" for "three times the cost of marking the utility facility, not to exceed $1,000.00"; and added subsection (h).

JUDICIAL DECISIONS

Violations. — When an asphalt company admitted that it had been "scraping" a site where a telephone cable was severed, and telephone company employees testified it appeared that there had been digging at the site where the cable was severed, the evidence was sufficient to support the Georgia Public Service Commission's conclusion that the company violated the Georgia Utility Facility Protection Act, O.C.G.A. § 25-9-1 et seq., by not contacting the utilities protection center to locate buried utilities before it began work. Douglas Asphalt Co. v. Ga. PSC, 263 Ga. App. 711, 589 S.E.2d 292 (2003).

Cited in Perry v. Georgia Power Co., 278 Ga. App. 759, 629 S.E.2d 588 (2006).

25-9-7. Determining whether utility facilities are present; information to UPC; noncompliance; future utility facilities; abandoned utility facilities.

(a)(1) Within 48 hours beginning the next business day after the business day following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each facility owner or operator shall determine whether or not utility facilities are located on the tract or parcel of land upon which the excavating or blasting is to occur. If utility facilities are determined to be present, the facility owner or operator shall designate, through stakes, flags, permanent markers, or other marks on the surface of the tract or parcel of land, the location of utility facilities. This subsection shall not apply to large projects.

(2) Designation of the location of utility facilities through staking, flagging, permanent markers, or other marking shall be in accordance with the American Public Works Association (APWA) color code in place at the time the location of the utility facility is designated. Additional marking requirements beyond color code, if any, shall be prescribed by rules and regulations promulgated by the Public Service Commission.

(3) A facility owner or operator is not required to mark its own facilities within 48 hours if the facility owner or operator or its agents are the only parties performing the excavation; however, such facilities shall be designated prior to the actual start of excavation.

(b)(1) Within 48 hours beginning the next business day after the business day following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each sewer system owner or operator shall determine whether or not sewer laterals are located or likely to be located on the tract or parcel of land upon which the excavating or blasting is to occur. If sewer laterals are determined to be present or likely to be present, then the sewer system owner or operator shall assist in designating sewer laterals up to the edge of the public right of way. Such assistance shall not constitute ownership or operation of the sewer lateral by the sewer system owner or operator. Good faith compliance with provisions of this subsection in response to a locate request shall constitute full compliance with this chapter, and no person shall be found liable to any party for damages or injuries as a result of performing in compliance with the requirements of this subsection.

(2) To assist in designating sewer laterals, the sewer system owner or operator shall provide its best available information regarding the location of the sewer laterals to the excavator. This information shall be conveyed to the excavator in a manner that may include, but shall not be limited to, any one of the following methods:

(A) Marking the location of sewer laterals in accordance with subsection (a) of this section, provided that:

(i) Any sewer lateral designated using the best available information shall constitute a good faith attempt and shall be deemed to be in compliance with this subsection, provided that such mark represents only the best available information of the sewer system owner or operator and may not be accurate; and

(ii) If a sewer lateral is unlocatable, a triangular green mark shall be placed at the sewer main pointing at the address in question to indicate the presence of an unlocatable sewer lateral;

(B) Providing electronic copies of or delivering the records through facsimile or by other means to an agreed upon location within 48 hours beginning the next business day after the business day following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days; provided, however, that for local governing authorities that receive fewer than 50 locate requests annually, the local governing authority may designate the agreed upon location and communicate such designation to the excavator;

(C) Arranging to meet the excavator on site to provide the best available information about the location of the sewer laterals;

(D) Providing the records through other processes and to other locations approved by documented agreement between the excavator and the facility owner or operator; or

(E) Any other reasonable means of conveyance approved by the commission after receiving recommendations from the advisory committee, provided that such means are equivalent to or exceed the provisions of subparagraph (A), (B), or (C) of this paragraph.

(c) Each facility owner or operator, either upon determining that no utility facility or sewer lateral is present on the tract or parcel of land or upon completion of the designation of the location of any utility facilities or sewer laterals on the tract or parcel of land as required by subsection (a) or (b) of this Code section, shall provide this information to the UPC in accordance with procedures developed by the UPC, which may include the use of the PRIS. In no event shall such notice be provided later than midnight of the second business day following receipt by the UPC of actual notice filed in accordance with Code Section 25-9-6.

(d) In the event the facility owner or operator is unable to designate the location of the utility facilities or sewer laterals due to extraordinary circumstances, the facility owner or operator shall notify the UPC and provide an estimated completion date in accordance with procedures developed by the UPC, which may include the use of the PRIS.

(e) If, at the end of the time period specified in subsections (a) and (b) of this Code section, any facility owner or operator has not complied with the requirements of subsections (a), (b), and (c) of this Code section, as applicable, the UPC shall issue a second request to each such facility owner or operator. If the facility owner or operator does not respond to this additional request by 12:00 Noon of that business day, either by notifying the UPC in accordance with procedures developed by the UPC that no utility facilities or sewer laterals are present on the tract or parcel of land, or by designating the location of such utility facilities or sewer laterals in accordance with the provisions of subsections (a) and (b) of this Code section, as applicable, then the person providing notice pursuant to Code Section 25-9-6 may proceed with the excavating or blasting, provided that there is no visible and obvious evidence of the presence of an unmarked utility facility or sewer lateral on the tract or parcel of land. Such person shall not be subject to any liability resulting from damage to the utility facility or sewer lateral as a result of the blasting or excavating, provided that such person complies with the requirements of Code Section 25-9-8.

(f) If visible and obvious evidence of the presence of an unmarked utility facility or sewer lateral does exist and the facility owner or operator either refuses to comply with subsections (a) through (d) of this

Code section, as applicable, or is not a member of the UPC, then the excavator shall attempt to designate such facility or sewer lateral prior to excavating. The facility owner or operator shall be liable for the actual costs associated with the excavator designating such utility facilities and sewer laterals. Such costs shall not exceed $100.00 or documented actual costs, whichever is greater, for each locate request.

(g) All utility facilities installed by facility owners or operators on or after January 1, 2001, shall be installed in a manner which will make them locatable using a generally accepted electronic locating method. All sewer laterals installed on or after January 1, 2006, shall be installed in a manner which will make them locatable by facility owners or operators using a generally accepted electronic locating method. In the event that an unlocatable utility facility or unlocatable sewer lateral becomes exposed when the facility owner or operator is present or in the case of sewer laterals when the sewer utility owner or operator is present on or after January 1, 2006, such utility facility or sewer lateral shall be made locatable through the use of a permanent marker or an updating of permanent records.

(h) Facility owners or operators shall either maintain recorded information concerning the location and other characteristics of abandoned utility facilities, maintain such abandoned utility facilities in a locatable manner, or remove such abandoned utility facilities. Facility owners or operators shall provide information on abandoned utility facilities, when possible, in response to a locate request or design locate request. When the presence of an abandoned facility within an excavation site is known, the facility owner or operator should attempt to locate and mark the abandoned facility or provide information to the excavator regarding such facilities. When located or exposed, all abandoned utility facilities and sewer laterals shall be treated as live utility facilities and sewer laterals.

(i) Notwithstanding any other provision of law to the contrary, a facility owner or operator may use a locator to designate any or all utility facilities and sewer laterals. The use of a locator shall not relieve the facility owner or operator of any responsibility under this chapter. However, by contract a facility owner or operator may be indemnified by a locator for any failure on the part of the locator to comply with the provisions of this chapter.

(j) By January 1, 2006, the advisory committee shall propose to the Public Service Commission rules and processes specific to the locating of large projects. These rules shall include, but shall not be limited to, the establishment of detailed processes. Such rules may also include changes in the time period allowed for a facility owner or operator to comply with the provisions of this chapter and to the time period for which designations are valid. The commission shall promulgate rules addressing this subsection no later than June 1, 2006.

(k)(1) Within 48 hours beginning the next business day after the business day following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each facility owner or operator shall determine whether or not unlocatable facilities other than sewer laterals are present. In the event that such facilities are determined to be present, the facility owner or operator shall exercise reasonable care in locating such facilities. The exercise of reasonable care shall require, at a minimum, the use of the best available information to designate the facilities and notification to the UPC of such attempted location. Placing markers or otherwise leaving evidence of locations of facilities is deemed to be an acceptable form of notification to the excavator or locator.

(2) This subsection shall not apply to sewer laterals. (Ga. L. 1969, p. 50, § 6; Ga. L. 1975, p. 417, § 4; Code 1981, § 25-9-6; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 6/SB 274.)

The 2005 amendment, effective July 1, 2005, rewrote this Code section.

JUDICIAL DECISIONS

Cited in Perry v. Georgia Power Co., 278 Ga. App. 759, 629 S.E.2d 588 (2006).

25-9-8. Treatment of gas pipes and other underground utility facilities by blasters and excavators.

(a) Persons engaged in blasting or in excavating with mechanized excavating equipment shall not strike, damage, injure, or loosen any utility facility or sewer lateral which has been staked, flagged, or marked in accordance with this chapter.

(b) When excavating or blasting is to take place within the tolerance zone, the excavator shall exercise such reasonable care as may be necessary for the protection of the utility facility or sewer lateral, including permanent markers and paint placed to designate utility facilities. This protection shall include, but may not be limited to, hand digging, pot holing, soft digging, vacuum excavation methods, pneumatic hand tools, other mechanical methods with the approval of the facility owner or operator, or other generally accepted methods. For parallel type excavations, the existing facility shall be exposed at intervals as often as necessary to avoid damages.

(c) When conducting trenchless excavation the excavator must exercise reasonable care, as described in subsection (b) of this Code section, and shall take additional care to attempt to prevent damage to utility

facilities and sewer laterals. The recommendations of the HDD consortium applicable to the performance of trenchless excavation set out in the document "Horizontal Directional Drilling Good Practice Guidelines," dated May, 2001, are adopted by reference as a part of this subsection to describe such additional care. The advisory committee may recommend to the commission more stringent criteria as it deems necessary to define additional care and the commission is authorized to adopt additional criteria to define additional care.

(d) Any person engaged in blasting or in excavating with mechanized excavating equipment who strikes, damages, injures, or loosens any utility facility or sewer lateral, regardless of whether the utility facility or sewer lateral is marked, shall immediately cease such blasting or excavating and notify the UPC and the appropriate facility owner or operator, if known. Upon receiving notice from the excavator or the UPC, the facility owner or operator shall send personnel to the location as soon as possible to effect temporary or permanent repair of the damage. Until such time as the damage has been repaired, no person shall engage in excavating or blasting activities that may cause further damage to the utility facility or sewer lateral except as provided in Code Section 25-9-12. (Ga. L. 1969, p. 50, § 7; Code 1981, § 25-9-7; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 7/SB 274.)

The 2005 amendment, effective July 1, 2005, in subsection (a), inserted "or sewer lateral" following "utility facility" and inserted ", flagged," following "has been staked"; in the first sentence of subsection (b), inserted "or sewer lateral, including permanent markers and paint placed to designate utility facilities" following "utility facility"; added present subsection (c); redesignated former subsection (c) as present subsection (d); and in present subsection (d), inserted "or sewer lateral" following "utility facility" in three places, and in the second sentence, substituted "UPC" for "utilities protection center" and substituted "damage" for "damages".

25-9-9. Degree of accuracy required in utility facility location information; effect of inaccurate information on liability of blaster or excavator; liability of facility owners for losses resulting from lack of accurate information.

(a) For the purposes of this chapter, the location of utility facilities which is provided by a facility owner or operator in accordance with subsection (a) of Code Section 25-9-7 to any person must be accurate to within 24 inches measured horizontally from the outer edge of either side of such utility facilities. If any utility facility becomes damaged by an excavator due to the furnishing of inaccurate information as to its location by the facility owner or operator, such excavator shall not be subject to any liability resulting from damage to the utility facility as a result of the blasting or excavating, provided that such person complies with the requirements of Code Section 25-9-8 and there is no visible and

obvious evidence to the excavator of the presence of a mismarked utility facility.

(b) Upon documented evidence that the person seeking information as to the location of utility facilities has incurred losses or expenses due to inaccurate information, lack of information, or unreasonable delays in supplying information by the facility owners or operators, the facility owners or operators shall be liable to that person for any such losses or expenses. (Ga. L. 1975, p. 417, § 5; Code 1981, § 25-9-8; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 8/SB 274.)

The 2005 amendment, effective July 1, 2005, in subsection (a), in the first sentence, deleted "information concerning" following "this chapter," and inserted "in accordance with subsection (a) of Code Section 25-9-7" following "owner or operator" and in the last sentence, inserted a comma following "excavating" and inserted "that" following "provided".

25-9-12. Notice requirements for emergency evacuations.

The notice requirements provided by Code Section 25-9-6 shall not be required of persons performing emergency excavations or excavation in extraordinary circumstances; provided, however, that any person who engages in an emergency excavation or excavation in extraordinary circumstances shall take all reasonable precautions to avoid or minimize damage to any existing utility facilities and sewer laterals; provided, further, that any person who engages in an emergency excavation or excavation in extraordinary circumstances shall give notice of the emergency excavation as soon as practical to the UPC. In giving such notice, such person must specifically identify the dangerous condition involved. If it is later determined that the excavation did not qualify as an emergency excavation, all liabilities and penalties will accrue as if no notice had been given. (Ga. L. 1970, p. 226, § 4; Code 1981, § 25-9-11; Ga. L. 1986, p. 1069, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1; Ga. L. 2005, p. 1142, § 9/SB 274.)

The 2005 amendment, effective July 1, 2005, in the first sentence, inserted "that" following "provided, however,", inserted "and sewer laterals" following "utility facilities", inserted "that" following "provided, further,", and substituted "UPC" for "utilities protection center"; and in the last sentence, deleted "by the commission" following "is later determined".

25-9-13. Penalties for violations of chapter; bonds; enforcement; advisory committee; dispose of settlement recommendations.

(a) Any person who violates the requirements of Code Section 25-9-6 and whose subsequent excavating or blasting damages utility facilities or sewer laterals shall be strictly liable for:

(1) All costs incurred by the facility owner or operator in repairing or replacing its damaged facilities; and

(2) Any injury or damage to persons or property resulting from damaging the utility facilities and sewer laterals.

(b) Each local governing authority is authorized to require by ordinance any bonds on utility contractors or on persons performing excavation or blasting within the public right of way or any dedicated utility easement as it may determine to assure compliance with subsection (a) of this Code section.

(c) Any person who violates the requirements of Code Section 25-9-6 and whose subsequent excavating or blasting damages utility facilities or sewer laterals shall also indemnify the affected facility owner or operator against all claims or costs incurred, if any, for personal injury, property damage, or service interruptions resulting from damaging the utility facilities and sewer laterals. Such obligation to indemnify shall not apply to any county, city, town, or state agency to the extent permitted by law. In any civil action by a facility owner or operator to recover the costs of repairing or replacing facilities damaged through violation of Code Section 25-9-6 or 25-9-8, those costs shall be calculated utilizing generally accepted accounting principles.

(d) In addition to the other provisions of this Code section, a professional licensing board shall be authorized to suspend or revoke any professional or occupational license, certificate, or registration issued to a person pursuant to Title 43 whenever such person violates the requirements of Code Section 25-9-6 or 25-9-8.

(e) Subsections (a), (c), and (d) of this Code section shall not apply to any person who shall commence, perform, or engage in blasting or in excavating with mechanized equipment on any tract or parcel of land in any county in this state if the facility owner or operator to which notice was given respecting such blasting or excavating with mechanized equipment as prescribed in subsection (a) of Code Section 25-9-6 has failed to comply with Code Section 25-9-7 or has failed to become a member of the UPC as required by Code Section 25-9-5.

(f) The commission shall enforce the provisions of this chapter. The commission may promulgate any rules and regulations necessary to implement the commission's authority to enforce this chapter.

(g)(1) The Governor shall appoint an advisory committee consisting of persons who are employees or officials of or who represent the interests of:

(A) One member to represent the Georgia Department of Transportation;

(B) One member to represent water systems or water and sewer systems owned or operated by local governing authorities;

(C) One member to represent the utilities protection center;

(D) One member to represent water systems or water and sewer systems owned or operated by counties;

(E) One member to represent water systems or water and sewer systems owned or operated by municipalities;

(F) One member to represent the nonmunicipal electric industry;

(G) Three members to represent excavators;

(H) One member to represent locators;

(I) One member to represent the nonmunicipal telecommunications industry;

(J) One member to represent the nonmunicipal natural gas industry;

(K) One member to represent municipal gas, electric, or telecommunications providers; and

(L) The commission chairperson or such chairperson's designee.

The commission chairperson or his or her designee shall serve as chairperson of the advisory committee and shall cast a vote only in the case of a tie. Persons appointed to the advisory committee shall have expert knowledge of this chapter and specific operations expertise with the subject matter encompassed by the provisions of this chapter. The new advisory committee shall be established within 60 days of July 1, 2005.

(2) The advisory committee shall assist the commission in the enforcement of this chapter, make recommendations to the commission regarding rules and regulations, and perform duties to be assigned by the commission including, but not limited to, the review of reported violations of this chapter and the preparation of recommendations to the commission as to the appropriate penalties to impose on persons violating the provisions of this chapter.

(3) The members of the advisory committee shall be immune, individually and jointly, from civil liability for any act or omission done or made in the performance of their duties while serving as members of such advisory committee, but only in the absence of willful misconduct.

(h)(1) Commission enforcement of this chapter shall follow the procedures described in this subsection. Nothing in this subsection

shall limit the authority of the commission delegated from the federal government and authorized in other state law.

(h)(2)(A) The commission is not authorized to impose civil penalties on any local governing authority except as provided in this paragraph. The commission may recommend training for local governing authorities in response to any probable or proven violation. On or after January 1, 2007, civil penalties may be recommended for or imposed on any local governing authority for refusal to comply with the requirements of Code Section 25-9-7 or for other violations of Code Section 25-9-7 that result in injury to people, damage to property, or the interruption of utility service in the event that investigators find that a local governing authority has demonstrated a pattern of willful noncompliance. Civil penalties may be recommended or imposed on or after January 1, 2006, for violations of provisions of this chapter other than Code Section 25-9-7 in the event that investigators find that the severity of an excavation violation warrants civil penalties or that a local governing authority has demonstrated a pattern of willful noncompliance. Any such civil penalty shall be recommended or imposed in accordance with a tiered penalty structure designed for local governing authorities. In the event that the investigators determine that a local governing authority has made a good faith effort to comply with this chapter, the investigators shall not recommend a civil penalty. For purposes of this subsection "refusal to comply" means that a utility facility owner or operator does not respond in PRIS to a locate request, does not respond to a direct telephone call to locate their facilities, or other such direct refusal. Refusal to comply does not mean a case where the volume of requests or some other mitigating circumstance prevents the utility owner or operator from locating in accordance with Code Section 25-9-7.

(B) No later than January 1, 2006, the advisory committee shall recommend to the commission for adoption a tiered penalty structure for local governing authorities. Such structure shall take into account the size, annual budget, gross receipts, number of utility connections and types of utilities within the territory of the local governing authority. Such penalty structure shall also take into account the number of locate tickets received annually by the local governing authority, the number of locate codes made annually to the local governing authority from the UPC, the number of utility customers whose service may have been interrupted by violations of this chapter, and the duration of such interruptions. Such penalty structure shall also consider the cost of compliance. The penalty structure shall establish for each tier the maximum penalty per violation and per 12 month period at a level to induce compliance with this chapter. Such maximum penalty shall not

exceed $5,000.00 per violation or $50,000.00 per 12 month period for the highest tier.

(3) If commission investigators find that a probable violation has occurred, they may recommend training in lieu of penalties to any person for any violation. The commission shall provide suggestions for corrective action to any person requesting such assistance. Commission investigators shall make recommended findings or offers of settlement to the respondent.

(4) Any respondent may accept or disagree with the settlement recommended by the investigators. If the respondent disagrees with the recommended settlement, the respondent may dispute the settlement recommendation to the advisory committee. The advisory committee shall then render a recommendation either supporting the investigators' recommendation, rejecting the investigators' recommendation, or substituting its own recommendation. With respect to an investigation of any probable violation committed by a local governing authority, any recommendation by the advisory committee shall be in accordance with the provisions of paragraph (2) of this subsection. In its deliberations the advisory committee shall consider the gravity of the violation or violations; the degree of the respondent's culpability; the respondent's history of prior offenses; and such other mitigating factors as may be appropriate. If the advisory committee determines that a respondent has made a good faith effort to comply with this chapter, the committee shall not recommend civil penalties against the respondent.

(5) If any respondent disagrees with the recommendation of the advisory committee, after notice and hearing by a hearing officer or administrative law judge, such officer or judge shall make recommendations to the commission regarding enforcement, including civil penalties. Any such recommendations relating to a local governing authority shall comply with the provisions of paragraph (2) of this subsection. The acceptance of the recommendations by the respondent at any point will stop further action by the investigators in that case.

(6) When the respondent agrees with the advisory committee recommendation, the investigators shall present such agreement to the commission. The commission is then authorized to adopt the recommendation of the advisory committee regarding a civil penalty, or to reject such a recommendation. The commission is not authorized to impose a civil penalty greater than the civil penalty recommended by the advisory committee or to impose any civil penalty if the advisory committee does not recommend a civil penalty.

(7) The commission may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date

of the hearing, impose a civil penalty not exceeding $10,000.00 for each violation, if it is proved that the person violated any of the provisions of this chapter as a result of a failure to exercise additional care in accordance with subsection (c) of Code Section 25-9-8 or reasonable care in accordance with other provisions of this chapter. Any such recommendations relating to a local governing authority shall comply with the provisions of paragraph (2) of this subsection. Any proceeding or civil penalty undertaken pursuant to this Code section shall neither prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action except as otherwise provided in this chapter.

(i) All civil penalties ordered by the commission and collected pursuant to this Code section shall be deposited in the general fund of the state treasury. (Code 1981, § 25-9-13, enacted by Ga. L. 1986, p. 1069, § 1; Ga. L. 1989, p. 495, § 1; Ga. L. 1990, p. 805, § 1; Ga. L. 2000, p. 780, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 1142, § 10/SB 274.)

The 2005 amendment, effective July 1, 2005, rewrote this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "July 1, 2005" was substituted for "the effective date of this subsection" in the last sentence in paragraph (g)(1).

CHAPTER 10

REGULATION OF FIREWORKS

25-10-1. Definitions.

(a) As used in this chapter, the term:

(1) "Fireworks" means any combustible or explosive composition or any substance or combination of substances or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, including blank cartridges, balloons requiring fire underneath to propel them, firecrackers, torpedos, skyrockets, Roman candles, bombs, sparklers, and other combustibles and explosives of like construction, as well as articles containing any explosive or flammable compound and tablets and other devices containing an explosive substance.

(2) "Proximate audience" means an audience closer to pyrotechnic devices than permitted by the National Fire Protection Association Standard 1123, *Code for Fireworks Display*, as adopted by the Safety Fire Commissioner.

(3) "Pyrotechnics" means fireworks.

(b) As used in this chapter, the term "fireworks" shall not include:

(1) Model rockets and model rocket engines designed, sold, and used for the purpose of propelling recoverable aero models, toy pistol paper caps in which the explosive content averages 0.25 grains or less of explosive mixture per paper cap or toy pistols, toy cannons, toy canes, toy guns, or other devices using such paper caps; nor shall the term "fireworks" include ammunition consumed by weapons used for sporting and hunting purposes; and

(2) Wire or wood sparklers of 100 grams or less of mixture per item; other sparkling items which are nonexplosive and nonaerial and contain 75 grams or less of chemical compound per tube or a total of 200 grams or less for multiple tubes; snake and glow worms; trick noise makers which include paper streamers, party poppers, string poppers, snappers, and drop pops each consisting of 0.25 grains or less of explosive mixture. (Ga. L. 1955, p. 550, § 2; Ga. L. 1962, p. 11, § 1; Ga. L. 1986, p. 798, § 1; Ga. L. 2003, p. 294, § 1; Ga. L. 2005, p. 596, § 1/SB 133; Ga. L. 2007, p. 47, § 25/SB 103.)

The 2005 amendment, effective May 2, 2005, redesignated the existing provisions of this Code section as subsection (a); in paragraph (a)(1), deleted the last sentence which read: "The term 'fireworks' shall not include model rockets and model rocket engines, designed, sold, and used for the purpose of propelling recoverable aero models, toy pistol paper caps in which the explosive content does not average more than 0.25 grains of explosive mixture per paper cap nor toy pistols, toy cannons, toy canes, toy guns, or other devices using such paper caps; nor shall the term 'fireworks' include ammunition consumed by weapons used for sporting and hunting purposes"; and added subsection (b).

The 2007 amendment, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (b)(1).

Law reviews. — For note on the 2003 amendment to this section, see 20 Ga. St. U. L. Rev. 165 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 10A Am. Jur. Pleading and Practice Forms, Explosions and Explosives, § 2.

25-10-2. Prohibited fireworks activities.

(a) It shall be unlawful for any person, firm, corporation, association, or partnership to offer for sale at retail or wholesale, to use or explode

or cause to be exploded, or to possess, manufacture, transport, or store any fireworks, except as otherwise provided in this chapter.

(b)(1) Notwithstanding any provision of this chapter to the contrary, it shall be unlawful for any person, firm, corporation, association, or partnership to sell to any person under 18 years of age any items defined in paragraph (2) of subsection (b) of Code Section 25-10-1.

(2) It shall be unlawful to sell any items defined in paragraph (2) of subsection (b) of Code Section 25-10-1 to any person by any means other than an in-person, face-to-face sale. Such person shall provide proper identification to the seller at the time of such purchase. For purposes of this paragraph, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes without being limited to, a passport, military identification card, driver's license, or an identification card authorized under Code Sections 40-5-100 through 40-5-104.

(3) It shall be unlawful to use any items defined in paragraph (2) of subsection (b) of Code Section 25-10-1 indoors. (Ga. L. 1955, p. 550, § 3; Ga. L. 1962, p. 11, § 2; Ga. L. 1996, p. 945, § 1; Ga. L. 2005, p. 596, § 2/SB 133.)

The 2005 amendment, effective May 2, 2005, redesignated the existing provisions of this Code section as subsection (a) and added subsection (b).

25-10-3.2. License required for pyrotechnics exhibits; requirements; penalty for violations.

Law reviews. — For note on the 2003 enactment of this section, see 20 Ga. St. U. L. Rev. 165 (2003).

25-10-4. Requirement of permit for conduct of fireworks display; application; imposition of conditions as to granting of permit; duration and transfer of permit; disposition of excess fireworks; fees.

Law reviews. — For note on the 2003 amendment to this section, see 20 Ga. St. U. L. Rev. 165 (2003).

25-10-5. License and fee for manufacture, storage, and transportation of fireworks or pyrotechnic displays; promulgation of safety regulations; conduct of inspections.

The annual license fee for any person, firm, or corporation conducting business in this state under paragraph (4) of Code Section 25-10-3 or

storing fireworks under Code Section 25-10-3.1 or conducting pyrotechnic displays under Code Section 25-10-3.2 shall be $1,500.00 per year, payable to the Safety Fire Commissioner. The license shall expire on December 31 of each year. The Safety Fire Commissioner is authorized and directed to promulgate safety regulations relating to the manufacture, storage, and transportation of fireworks within this state in order to ensure the adequate protection of the employees of any such person, firm, or corporation and of the general public. The Safety Fire Commissioner is also authorized and directed to promulgate safety regulations relating to the public exhibition or display of pyrotechnics and the licensing requirements of those conducting such public exhibitions or displays, as he or she deems necessary. The Safety Fire Commissioner is further authorized and directed to conduct periodic inspections of the facilities of any person, firm, or corporation manufacturing, storing, and transporting fireworks as provided in paragraph (4) of Code Section 25-10-3 or as provided in Code Section 25-10-3.1 in order to ensure compliance with fire safety rules and regulations. (Ga. L. 1969, p. 1144, § 2; Ga. L. 1986, p. 798, § 2; Ga. L. 1996, p. 945, § 6; Ga. L. 2003, p. 294, § 4; Ga. L. 2010, p. 9, § 1-51/HB 1055.)

The 2010 amendment, effective May 12, 2010, substituted "$1,500.00" for "$1,000.00" near the end of the first sentence.

Law reviews. — For note on the 2003 amendment to this section, see 20 Ga. St. U. L. Rev. 165 (2003).

25-10-8. Penalty for violations of chapter.

Law reviews. — For note on the 2003 amendment to this section, see 20 Ga. St. U. L. Rev. 165 (2003).

25-10-9. Penalty for illegal sale of sparklers or other devices.

Notwithstanding any provision of this chapter to the contrary, any person, firm, corporation, association, or partnership who or which knowingly violates subsection (b) of Code Section 25-10-2 may be punished by a fine not to exceed $100.00. Each sales transaction in violation of subsection (b) of Code Section 25-10-2 shall be a separate offense. (Code 1981, § 25-10-9, enacted by Ga. L. 2005, p. 596, § 3/SB 133.)

Effective date. — This Code section became effective May 2, 2005.

CHAPTER 11

FIRE PROTECTION SPRINKLER CONTRACTORS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Negligent Failure to Install or Maintain Smoke Alarm or Sprinkler System, 5 POF3d 383.

25-11-4. Application to become certificate holder; certificate fee; demonstration of applicant's competence and knowledge; limitations on issuance of certificate; expiration and renewal of certificate.

(a) Any individual desiring to become a certificate holder shall submit to the Commissioner a completed application on forms prescribed by the Commissioner. Such individual shall remit with his or her application a nonrefundable certificate fee of $150.00 plus a one-time filing fee of $75.00. Such fee shall not be prorated for portions of a year.

(b) Prior to obtaining a certificate, the applicant shall demonstrate his or her competence and knowledge of water-based fire protection systems by:

(1) Successfully completing a competency test by means prescribed by rules and regulations as adopted and promulgated by the Commissioner; or

(2) Submitting to the Commissioner a certification from either the state fire commissioner or state fire marshal of another jurisdiction whenever a reciprocal agreement has been entered into between the two jurisdictions pursuant to the provisions of this chapter.

(c)(1) If the applicant has paid the required fees and has met one of the requirements of subsection (b) of this Code section, the Commissioner shall issue a certificate of competency in the name of the applicant, unless such applicant has been cited under other provi-

sions of this chapter. Such certificate shall expire annually as determined by the rules and regulations and shall be nontransferable.

(2) In no case shall a certificate holder be allowed to obtain a certificate of competency for more than one fire protection sprinkler contractor or more than one office location at a time. If the certificate holder should leave the employment of a fire protection sprinkler contractor or change office locations, he or she must notify the Commissioner in writing within 30 days.

(d) A certificate holder desiring to renew his or her certificate shall submit a renewal application to the Commissioner and remit therewith a renewal fee of $100.00 on or before the date determined by the rules and regulations of each year. If the state minimum fire safety standards regarding the installation or maintenance of fire protection sprinkler systems or water-spray systems promulgated by the Commissioner have been revised since the date the certificate holder's expiring certificate was issued, the Commissioner may, upon 30 days' notice, require the certificate holder to again meet one of the requirements of subsection (b) of this Code section prior to the renewal of his or her certificate. (Code 1981, § 25-11-4, enacted by Ga. L. 1982, p. 1212, § 1; Ga. L. 1984, p. 824, § 2; Ga. L. 1989, p. 1124, § 2; Ga. L. 1997, p. 1698, § 1; Ga. L. 2010, p. 9, § 1-52/HB 1055.)

The 2010 amendment, effective May 12, 2010, in the second sentence of subsection (a), substituted "$150.00" for "$100.00" in the middle and substituted "$75.00" for "$50.00" at the end.

25-11-5. Licensing of each location; application; fee; prerequisites.

(a) Where a fire protection sprinkler contractor has multiple office locations for the purpose of design, installation, repair, alteration, addition, maintenance, or inspection of water-based fire protection systems, each location shall be licensed under the provisions of this chapter.

(b) Any organization or individual desiring to become a fire protection sprinkler contractor shall submit to the Commissioner a completed application on forms prescribed by him or her. Such organization or individual shall remit with his or her application a nonrefundable license fee of $100.00 plus a one-time filing fee of $75.00. Such fee shall not be prorated for portions of a year.

(c) Prior to obtaining a sprinkler contractor's license, the applicant shall:

(1) Submit to the Commissioner a copy of any and all certificate of competency holders' certificates employed by the applicant; and

(2) Submit to the Commissioner proof of comprehensive liability insurance coverage. The liability insurance policy shall provide coverage in an amount not less than $1 million and shall cover any loss to property or personal injury caused by the fire protection sprinkler contractor. The policy must be purchased from an insurer authorized to do business in Georgia.

(d) A fire protection sprinkler contractor license shall expire annually as determined by the rules and regulations. A license holder desiring to renew his or her license shall submit a renewal application to the Commissioner and remit a renewal fee of $75.00 on or before the date determined by the rules and regulations of each year. (Code 1981, § 25-11-5, enacted by Ga. L. 1997, p. 1698, § 1; Ga. L. 2010, p. 9, § 1-53/HB 1055.)

The 2010 amendment, effective May 12, 2010, in the second sentence of subsection (b), substituted "$100.00" for "$50.00" and substituted "$75.00" for "$50.00" at the end; and substituted "$75.00" for "$50.00" near the middle of the second sentence of subsection (d).

25-11-6. Inspector's license.

(a) Any individual desiring to become a fire protection sprinkler system inspector shall submit to the Commissioner a completed application on the prescribed forms. Such individual shall remit with his or her application a nonrefundable license fee of $100.00 plus a one-time filing fee of $75.00. Such fees shall not be prorated for portions of a year.

(b) Prior to obtaining a license, the applicant shall demonstrate his or her competence and employment by a sprinkler contractor by:

(1) Successfully completing a competency test by means prescribed by rules and regulations as adopted and promulgated by the Commissioner; and

(2) Submitting to the Commissioner proof of employment by a sprinkler contractor who has comprehensive liability insurance coverage. The liability insurance policy shall provide coverage in an amount not less than $1 million and shall cover any loss to property or personal injury caused by the fire protection sprinkler inspector. The policy must be purchased from an insurer authorized to do business in Georgia.

(c) A fire protection sprinkler system inspector license shall expire annually as determined by the rules and regulations. A license holder desiring to renew his or her license shall submit a renewal application to the Commissioner and remit a renewal fee of $75.00 on or before the date determined by the rules and regulations of each year. (Code 1981, § 25-11-6, enacted by Ga. L. 1997, p. 1698, § 1; Ga. L. 2010, p. 9, § 1-54/HB 1055.)

The 2010 amendment, effective May 12, 2010, in subsection (a), in the second sentence, substituted "$100.00" for "$50.00" and substituted "$75.00" for "$50.00" at the end; and substituted "$75.00" for "$50.00" near the middle of the second sentence of subsection (c).

25-11-7. Fire protection system designer license.

(a) Any individual desiring to become a fire protection system designer shall submit to the Commissioner a completed application on forms prescribed by the Commissioner. Such individual shall remit with his or her application a nonrefundable license fee of $100.00 plus a one-time filing fee of $75.00. Such fee shall not be prorated for portions of a year.

(b) Prior to obtaining a license, the applicant shall demonstrate his or her competence and knowledge of water-based fire protection systems by means prescribed by rules and regulations as adopted and promulgated by the Commissioner or as set forth in Chapter 15 of Title 43.

(c) A fire protection system designer license shall expire annually as determined by the rules and regulations. A license holder desiring to renew his or her license shall submit a renewal application to the Commissioner and remit a renewal fee of $75.00 on or before the date determined by the rules and regulations of each year. (Code 1981, § 25-11-7, enacted by Ga. L. 1997, p. 1698, § 1; Ga. L. 1998, p. 128, § 25; Ga. L. 2010, p. 9, § 1-55/HB 1055.)

The 2010 amendment, effective May 12, 2010, in the second sentence of subsection (a), substituted "$100.00" for "$50.00" and substituted "$75.00" for "$50.00" at the end; and substituted "$75.00" for "$50.00" near the middle of the second sentence of subsection (c).

CHAPTER 12

REGULATION OF FIRE EXTINGUISHERS AND SUPPRESSION SYSTEMS

Sec.
25-12-8. Permit and fee required for individual installing, inspecting, servicing, or testing; exemption.

25-12-8. Permit and fee required for individual installing, inspecting, servicing, or testing; exemption.

Each individual actually performing the installing, inspecting, repairing, recharging, servicing, or testing activities must possess a valid

and subsisting permit issued by the Commissioner. The annual fee for said permit shall be as established by the Commissioner by rule or regulation, but such permit fee shall not exceed $75.00. Such permit shall not be required for any individual employed by any firm or governmental entity that engages only in installing, inspecting, recharging, repairing, servicing, or testing of portable fire extinguishers or fire suppression systems owned by the firm and installed on property under the control of said firm. Such individuals shall remain subject to the rules and regulations adopted pursuant to this chapter. (Code 1981, § 25-12-8, enacted by Ga. L. 1991, p. 933, § 1; Ga. L. 1997, p. 558, § 2; Ga. L. 2010, p. 9, § 1-56/HB 1055.)

The 2010 amendment, effective May 12, 2010, substituted "$75.00" for "$25.00" at the end of the second sentence.

CHAPTER 14

GEORGIA FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION

Effective date. — This chapter became effective January 1, 2010.

Editor's notes. — Ga. L. 2008, p. 104, § 2, not codified by the General Assembly, provides: "This Act shall preempt and supersede and shall prohibit the enactment of any local laws, ordinances, rules, and regulations by the governing authority of any county or municipal corporation concerning the testing of cigarettes, the performance standards of cigarettes, or the certification that cigarettes have been manufactured in compliance with testing and performance standards."

25-14-1. Short title.

This chapter shall be known and may be cited as the "Georgia Fire Safety Standard and Firefighter Protection Act." (Code 1981, § 25-14-1, enacted by Ga. L. 2008, p. 104, § 1/SB 418.)

25-14-2. Definitions.

As used in this chapter, the term:

(1) "Agent" means any person authorized by the state revenue commissioner to purchase and affix stamps on packages of cigarettes.

(2) "Cigarette" means:

(A) Any roll for smoking made wholly or in part of tobacco when the cover of the roll is paper or any substance other than tobacco; or

(B) Any roll for smoking wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described in subparagraph (A) of this paragraph.

(3) "Commissioner" means the Safety Fire Commissioner.

(4) "Manufacturer" means:

(A) Any entity which manufactures, makes, produces, or causes to be produced cigarettes sold in this state or cigarettes said entity intends to be sold in this state;

(B) The first purchaser of cigarettes manufactured anywhere that intends to resell such cigarettes in this state regardless of whether the original manufacturer, maker, or producer intends such cigarettes to be sold in the United States; or

(C) Any entity which becomes a successor of an entity described in subparagraph (A) or (B) of this paragraph.

(4.1) "New York Fire Safety Standards for Cigarettes" means those New York Fire Safety Standards for Cigarettes in effect on April 1, 2008.

(5) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in paragraph (6) of subsection (b) of Code Section 25-14-3 for all test trials used to certify cigarettes in accordance with this chapter.

(6) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(7) "Retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products.

(8) "Sale" means any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution in any manner or by any means whatever.

(9) "Sell" means to sell or to offer or agree to do the same.

(10) "Wholesale dealer" means any person that is not a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale. A wholesale dealer is also any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person. (Code 1981, § 25-14-2, enacted by Ga. L. 2008, p. 104, § 1/SB 418.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, in paragraph (1), "state revenue commissioner" was substituted for "commissioner of revenue", and in subparagraph (4)(A), "or" was deleted from the end.

JUDICIAL DECISIONS

Cited in Carolina Tobacco Co. v. Baker, 295 Ga. App. 115, 670 S.E.2d 811 (2008).

25-14-3. Standards for testing cigarettes; reports; exceptions.

(a) Except as provided in subsection (h) of this Code section, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this Code section, a written certification has been filed by the manufacturer in accordance with Code Section 25-14-4, and the cigarettes have been marked in accordance with Code Section 25-14-5.

(b)(1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) Standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(2) Testing shall be conducted on ten layers of filter paper.

(3) No more than 25 percent of the cigarettes tested in a test trial in accordance with this Code section shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by this Code section shall only be applied to a complete test trial.

(5) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (ISO) or other comparable accreditation standard required by the Commissioner.

(6) Laboratories conducting testing in accordance with this Code section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

(7) This Code section does not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

(8) Testing performed or sponsored by the Commissioner to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this Code section.

(c) Each cigarette listed in a certification submitted pursuant to Code Section 25-14-4 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this Code section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least 15 millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(d) A manufacturer of a cigarette that the Commissioner determines cannot be tested in accordance with the test method prescribed in paragraph (1) of subsection (b) of this Code section shall propose a test method and performance standard for the cigarette to the Commissioner. Upon approval of the proposed test method and a determination by the Commissioner that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in paragraph (3) of subsection (b) of this Code section, the manufacturer may employ such test method and performance standard to certify such cigarette pursuant to Code Section 25-14-4. If the Commissioner determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter, and the Commissioner finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's

law or regulation under a legal provision comparable to this Code section, then the Commissioner shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the Commissioner demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this Code section shall apply to the manufacturer.

(e) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years, and shall make copies of these reports available to the Commissioner and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request shall be subject to a civil penalty not to exceed $10,000.00 for each day after the sixtieth day that the manufacturer does not make such copies available.

(f) The Commissioner may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in paragraph (3) of subsection (b) of this Code section.

(g) The Commissioner shall review the effectiveness of this Code section and report his or her findings every three years to the General Assembly and, if appropriate, recommendations for legislation to improve the effectiveness of this chapter. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(h) The requirements of subsection (a) of this Code section shall not prohibit:

(1) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesale or retailer dealer can establish that state tax stamps were affixed to the cigarettes prior to January 1, 2010, and if the wholesale or retailer dealer can establish that the inventory was purchased prior to January 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year; or

(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this paragraph, the term "consumer testing" shall mean an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of such cigarettes,

utilizing only the quantity of cigarettes that is reasonably necessary for such assessment.

(i) This chapter shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes. (Code 1981, § 25-14-3, enacted by Ga. L. 2008, p. 104, § 1/SB 418; Ga. L. 2009, p. 8, § 25/SB 46.)

The 2009 amendment, effective January 1, 2010, part of an Act to revise, modernize, and correct the Code, revised language in this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "paragraph" was substituted for "subsection" in the second sentence of paragraph (h)(2).

25-14-4. Written certification.

(a) Each manufacturer shall submit to the Commissioner a written certification attesting that:

(1) Each cigarette listed in the certification has been tested in accordance with Code Section 25-14-3; and

(2) Each cigarette listed in the certification meets the performance standard set forth in paragraph (3) of subsection (b) of Code Section 25-14-3.

(b) Each cigarette listed in the certification shall be described with the following information:

(1) Brand or trade name on the package;

(2) Style, such as light or ultra light;

(3) Length in millimeters;

(4) Circumference in millimeters;

(5) Flavor, such as menthol or chocolate, if applicable;

(6) Filter or nonfilter;

(7) Package description, such as soft pack or box;

(8) Marking approved in accordance with Code Section 25-14-5;

(9) The name, address, and telephone number of the laboratory, if different from the manufacturer that conducted the test; and

(10) The date that the testing occurred.

(c) The certifications shall also be made available to the Attorney General for purposes consistent with this chapter and to the state revenue commissioner for the purposes of ensuring compliance with this Code section.

(d) Each cigarette certified under this Code section shall be recertified every three years.

(e) For each cigarette listed in a certification, a manufacturer shall pay to the Commissioner a fee of $250.00.

(f) If a manufacturer has certified a cigarette pursuant to this Code section and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in Code Section 25-14-3 and maintains records of that retesting as required by Code Section 25-14-3. Any altered cigarette which does not meet the performance standard set forth in Code Section 25-14-3 shall not be sold in this state. (Code 1981, § 25-14-4, enacted by Ga. L. 2008, p. 104, § 1/SB 418; Ga. L. 2009, p. 8, § 25/SB 46; Ga. L. 2010, p. 878, § 25/HB 1387.)

The 2009 amendment, effective January 1, 2010, part of an Act to revise, modernize, and correct the Code, revised language in subsection (e).

The 2010 amendment, effective June 3, 2010, part of an Act to revise, modernize, and correct the Code, revised capitalization in the introductory language of subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "state revenue commissioner" was substituted for "commissioner of revenue" in subsection (c).

25-14-5. Required marking of cigarettes.

(a) Cigarettes that are certified by a manufacturer in accordance with Code Section 25-14-4 shall be marked to indicate compliance with the requirements of Code Section 25-14-3. The marking shall be in eight-point type or larger and consist of:

(1) Modification of the universal product code to include a visible mark printed at or around the area of the universal product code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code;

(2) Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette packaging or cellophane wrap; or

(3) Printed, stamped, engraved, or embossed text on the cigarette packaging or cellophane wrap that indicates that the cigarettes meet Georgia standards.

(b) A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including but not limited to packs, cartons, and cases, and brands marketed by that manufacturer.

(c) The Commissioner shall be notified as to the marking that is selected.

(d) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the Commissioner for approval. Upon receipt of the request, the Commissioner shall approve or disapprove the marking offered. The Commissioner shall approve:

(1) Any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes; or

(2) The letters "FSC," which signifies Fire Standards Compliant, appearing in eight-point type or larger and permanently printed, stamped, engraved, or embossed on the package at or near the universal product code.

Proposed markings shall be deemed approved if the Commissioner fails to act within ten business days of receiving a request for approval.

(e) No manufacturer shall modify its approved marking unless the modification has been approved by the Commissioner in accordance with this Code section.

(f) Manufacturers certifying cigarettes in accordance with Code Section 25-14-4 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this Code section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the Commissioner, the state revenue commissioner, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this Code section. (Code 1981, § 25-14-5, enacted by Ga. L. 2008, p. 104, § 1/SB 418; Ga. L. 2009, p. 8, § 25/SB 46.)

The 2009 amendment, effective January 1, 2010, part of an Act to revise, modernize, and correct the Code, revised language in subsections (c) through (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "state revenue commissioner" was substituted for "commissioner of revenue" in the last sentence of subsection (f).

25-14-6. Civil penalty; forfeiture.

(a) A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of Code Section 25-14-3, for a first offense shall be subject to a civil penalty not to exceed $100.00 dollars for each pack of such cigarettes sold or offered for sale, provided that in

no case shall the penalty against any such person or entity exceed $100,000.00 during any 30 day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of Code Section 25-14-3 shall be subject to a civil penalty not to exceed $100.00 for each pack of such cigarettes, provided that in no case shall the penalty against any retail dealer exceed $25,000.00 during any 30 day period.

(c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Code Section 25-14-4 shall be subject to a civil penalty of at least $75,000.00 and not to exceed $250,000.00 for each such false certification.

(d) Any person violating any other provision in this chapter shall be subject to a civil penalty for a first offense not to exceed $1,000.00, and for a subsequent offense subject to a civil penalty not to exceed $5,000.00, for each such violation.

(e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by Code Section 25-14-3 shall be subject to forfeiture and, upon forfeiture, shall be destroyed; provided, however, that prior to the destruction of any cigarette pursuant to this Code section, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(f) In addition to any other remedy provided by law, the Commissioner or Attorney General may file an action in superior court for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this chapter or of rules or regulations adopted under this chapter constitutes a separate civil violation for which the Commissioner or Attorney General may obtain relief.

(g) Whenever any law enforcement personnel or duly authorized representative of the Commissioner or Attorney General shall discover any cigarettes that have not been marked in the manner required under Code Section 25-14-5, such personnel are hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the state revenue commissioner and shall be forfeited to the state. Cigarettes seized pursuant to this subsection shall be destroyed; provided, however, that prior to the destruction of any cigarette seized pursuant to this subsection, the true holder of the trademark rights in the cigarette brand shall be permitted

to inspect the cigarette. (Code 1981, § 25-14-6, enacted by Ga. L. 2008, p. 104, § 1/SB 418; Ga. L. 2009, p. 8, § 25/SB 46.)

The 2009 amendment, effective January 1, 2010, part of an Act to revise, modernize, and correct the Code, revised language in subsections (f) and (g).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, in subsection (g), in the first sentence, "under" was inserted, and "are" was substituted for "is", and in the second sentence, "state revenue commissioner" was substituted for "commissioner of revenue".

25-14-7. Rules and regulations; inspections.

(a) The Commissioner may promulgate rules and regulations, pursuant to Chapter 13 of Title 50, necessary to effectuate the purposes of this chapter.

(b) The state revenue commissioner in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under Chapter 11 of Title 48, may inspect such cigarettes to determine if the cigarettes are marked as required by Code Section 25-14-5. If the cigarettes are not marked as required, the state revenue commissioner shall notify the Commissioner. (Code 1981, § 25-14-7, enacted by Ga. L. 2008, p. 104, § 1/SB 418; Ga. L. 2009, p. 8, § 25/SB 46.)

The 2009 amendment, effective January 1, 2010, part of an Act to revise, modernize, and correct the Code, revised language in subsections (a) and (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "state revenue commissioner" was substituted for "commissioner of revenue" twice in subsection (b).

25-14-8. Enforcement of this chapter; cooperation during inspections.

To enforce the provisions of this chapter, the Attorney General and the Commissioner, their duly authorized representatives, and other law enforcement personnel shall be authorized to examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale shall be directed and required to give the Attorney General and the Commissioner, their duly authorized representatives, and other law enforcement personnel the means, facilities, and opportunity for the examinations authorized by this Code section. (Code 1981, § 25-14-8, enacted by Ga. L. 2008, p. 104, § 1/SB 418; Ga. L. 2009, p. 8, § 25/SB 46.)

The 2009 amendment, effective January 1, 2010, part of an Act to revise, modernize, and correct the Code, revised language in this Code section.

25-14-9. Manufacturing for sale or selling cigarettes outside of Georgia not prohibited.

Nothing in this chapter shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of Code Section 25-14-3 if the cigarettes are not for sale in this state or are packaged for sale outside the United States, and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state. (Code 1981, § 25-14-9, enacted by Ga. L. 2008, p. 104, § 1/SB 418.)

25-14-10. Effect of modification of federal standards.

This chapter shall cease to be applicable if federal reduced cigarette ignition propensity standards that preempt this chapter are enacted. (Code 1981, § 25-14-10, enacted by Ga. L. 2008, p. 104, § 1/SB 418.)

25-14-11. Impact of changes in New York safety standards.

If, after the date specified in paragraph (4.1) of Code Section 25-14-2, the New York safety standards are changed, then the Commissioner shall suggest proposed legislation to the chairpersons of the appropriate standing committees of the General Assembly as designated by the presiding officer of each house. Such proposed legislation shall contain provisions necessary to bring paragraph (4.1) of Code Section 25-14-2 into accordance with the New York safety standards. (Code 1981, § 25-14-11, enacted by Ga. L. 2008, p. 104, § 1/SB 418; Ga. L. 2009, p. 8, § 25/SB 46.)

The 2009 amendment, effective January 1, 2010, part of an Act to revise, modernize, and correct the Code, revised language in this Code section.

CHAPTER 15

OTHER SAFETY INSPECTIONS AND REGULATIONS

Article 1

General Provisions

Sec.

Article 2

Regulation of Boilers and Pressure Vessels

Article 3

Amusement Ride Safety

Article 4

Carnival Ride Safety

OPINIONS OF THE ATTORNEY GENERAL

State owned and operated boilers and pressure vessels are not subject to the regulatory provisions of former O.C.G.A. § 34-11-1 et seq (redesignated as O.C.G.A. 25-15-10 et seq.). 1985 Op. Att'y Gen. No. 85-57 .

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Inspection Laws, § 1 et seq.

Am. Jur. Trials. — Boiler Explosion Cases, 13 Am. Jur. Trials 343.

C.J.S. — 53 C.J.S., Licenses, § 1 et seq.

ARTICLE 1

GENERAL PROVISIONS

25-15-1. Office of Safety Fire Commissioner to be successor to Department of Labor relating to transferred functions; transfer of employees; Safety Fire Commissioner to report on effects and results of this Code section.

(a) The office of Safety Fire Commissioner shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Labor in effect on June 30, 2012, or scheduled to go into effect on or after July 1, 2012, and which relate to the functions transferred to the office of Safety Fire Commissioner pursuant to this chapter and Part 6 of Article 1 of Chapter 2 of Title 8 and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Labor in effect on June 30, 2012, which relate to the functions transferred to the office of Safety Fire Commissioner

pursuant to this chapter and Part 6 of Article 1 of Chapter 2 of Title 8. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the office of Safety Fire Commissioner by proper authority or as otherwise provided by law.

(b) Any proceedings or other matters pending before the Department of Labor or Commissioner of Labor on June 30, 2012, which relate to the functions transferred to the office of Safety Fire Commissioner pursuant to this chapter and Part 6 of Article 1 of Chapter 2 of Title 8 shall be transferred to the office of Safety Fire Commissioner on July 1, 2012.

(c) The rights, privileges, entitlements, obligations, and duties of parties to contracts, leases, agreements, and other transactions as identified by the Office of Planning and Budget entered into before July 1, 2012, by the Department of Labor which relate to the functions transferred to the office of Safety Fire Commissioner pursuant to this chapter and Part 6 of Article 1 of Chapter 2 of Title 8 shall continue to exist; and none of these rights, privileges, entitlements, obligations, and duties are impaired or diminished by reason of the transfer of the functions to the office of Safety Fire Commissioner. In all such instances, the office of Safety Fire Commissioner shall be substituted for the Department of Labor, and the office of Safety Fire Commissioner shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(d) All persons employed by the Department of Labor in capacities which relate to the functions transferred to the office of Safety Fire Commissioner pursuant to this chapter and Part 6 of Article 1 of Chapter 2 of Title 8 on June 30, 2012, shall, on July 1, 2012, become employees of the office of Safety Fire Commissioner in similar capacities, as determined by the Commissioner of Insurance. Such employees shall be subject to the employment practices and policies of the office of Safety Fire Commissioner on and after July 1, 2012, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and thereby under the State Personnel Administration and who are transferred to the office shall retain all existing rights under the State Personnel Administration. Accrued annual and sick leave possessed by the transferred employees on June 30, 2012, shall be retained by such employees as employees of the office of Safety Fire Commissioner.

(e) On July 1, 2012, the office of Safety Fire Commissioner shall receive custody of the state owned real property in the custody of the Department of Labor on June 30, 2012, and which pertains to the functions transferred to the office of Safety Fire Commissioner pursuant to this chapter and Part 6 of Article 1 of Chapter 2 of Title 8.

(f) The Safety Fire Commissioner shall provide a report to the House Committee on Governmental Affairs and the Senate Government Oversight Committee prior to the first day of the 2013 regular session of the Georgia General Assembly outlining the effects and results of this Code section and providing information on any problems or concerns with respect to the implementation of this Code section. (Code 1981, § 25-15-1, enacted by Ga. L. 2012, p. 1144, § 1/SB 446.)

Effective date. — This Code section became effective May 2, 2012.

ARTICLE 2

REGULATION OF BOILERS AND PRESSURE VESSELS

Editor's notes. — Ga. L. 2012, p. 1144, § 2/SB 446 redesignated Chapter 11 of Title 34 as this article.

25-15-10. Short title.

This article shall be known and may be cited as the "Boiler and Pressure Vessel Safety Act" and, except as otherwise provided in this article, shall apply to all boilers and pressure vessels. (Code 1981, § 34-11-1, enacted by Ga. L. 1984, p. 1227, § 1; Code 1981, § 25-15-10, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-1 as present Code Section 25-15-10, and twice substituted "article" for "chapter" in this Code section.

25-15-11. Definitions.

As used in this article, the term:

(1) "Boiler" means a closed vessel in which water or other liquid is heated, steam or vapor is generated, or steam is superheated or in which any combination of these functions is accomplished, under pressure or vacuum, for use externally to itself, by the direct application of energy from the combustion of fuels or from electricity, solar, or nuclear energy. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves. The term "boiler" is further defined as follows:

(A) "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding 15 psig or a hot water boiler operating at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees Fahrenheit.

(B) "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding 160 psig or temperatures exceeding 250 degrees Fahrenheit.

(C) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig.

(2) "Certificate of inspection" means an inspection, the report of which is used by the chief inspector to determine whether or not a certificate as provided by subsection (c) of Code Section 25-15-24 may be issued.

(3) "Commissioner" means the Safety Fire Commissioner.

(4) "Office" means the office of Safety Fire Commissioner.

(5) "Pressure vessel" means a vessel other than those vessels defined in paragraph (1) of this Code section in which the pressure is obtained from an external source or by the application of heat. (Code 1981, § 34-11-2, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1987, p. 1349, § 1; Ga. L. 2001, p. 873, § 11; Code 1981, § 25-15-11, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-2 as present Code Section 25-15-11; substituted "article" for "chapter" in the introductory paragraph; deleted paragraph (1), which read: "Reserved."; redesignated former paragraphs (2) and (3) as present paragraphs (1) and (2), respectively; substituted "25-15-24" for "34-11-15" in paragraph (2); redesignated former paragraph (4) as present paragraph (3), and, in paragraph (3), substituted "Safety Fire Commissioner" for "Commissioner of Labor"; added paragraph (4); deleted former paragraph (5), which read: "'Department' means the Department of Labor."; redesignated former paragraph (6) as present paragraph (5), and, in paragraph (5), substituted "paragraph (1)" for "paragraph (2)".

25-15-12. Consulting on boilers and pressure vessels.

The Commissioner shall be authorized to consult with persons knowledgeable in the areas of construction, use, or safety of boilers and pressure vessels and to create committees composed of such consultants to assist the Commissioner in carrying out his or her duties under this article. (Code 1981, § 34-11-3, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1985, p. 213, § 1; Ga. L. 1989, p. 443, § 2; Ga. L. 2001, p. 873, § 12; Code 1981, § 25-15-12, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-3 as present Code Section 25-15-12, and substituted "article" for "chapter" at the end of this Code section.

25-15-13. Definitions, rules, and regulations for safe construction, installation, inspection, maintenance, and repair.

(a)(1) The office shall formulate definitions, rules, and regulations for the safe construction, installation, inspection, maintenance, and repair of boilers and pressure vessels in this state.

(2) The definitions, rules, and regulations so formulated for new construction shall be based upon and at all times follow the generally accepted nation-wide engineering standards, formulas, and practices established and pertaining to boiler and pressure vessel construction and safety; and the office may adopt an existing published codification thereof, known as the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, with the amendments and interpretations thereto made and approved by the council of the society, and may likewise adopt the amendments and interpretations subsequently made and published by the same authority. When so adopted, the same shall be deemed to be incorporated into and shall constitute a part of the whole of the definitions, rules, and regulations of the office. Amendments and interpretations to the code so adopted shall be effective immediately upon being promulgated, to the end that the definitions, rules, and regulations shall at all times follow the generally accepted nation-wide engineering standards.

(3) The office shall formulate the rules and regulations for the inspection, maintenance, and repair of boilers and pressure vessels which were in use in this state prior to the date upon which the first rules and regulations under this article pertaining to existing installations become effective or during the 12 month period immediately thereafter. The rules and regulations so formulated shall be based upon and at all times follow generally accepted nation-wide engineering standards and practices and may adopt sections of the Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors or API 510 of the American Petroleum Institute, as applicable.

(b) The rules and regulations and any subsequent amendments thereto formulated by the office shall, immediately following a hearing upon not less than 20 days' notice as provided in this article, be approved and published and when so promulgated shall have the force and effect of law, except that the rules applying to the construction of new boilers and pressure vessels shall not become mandatory until 12 months after their promulgation by the office. Notice of the hearing shall give the time and place of the hearing and shall state the matters to be considered at the hearing. Such notice shall be given to all persons directly affected by such hearing. In the event all persons directly affected are unknown, notice may be perfected by publication in a

newspaper of general circulation in this state at least 20 days prior to such hearing.

(c) Subsequent amendments to the rules and regulations adopted by the office shall be permissive immediately and shall become mandatory 12 months after their promulgation. (Code 1981, § 34-11-4, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1985, p. 213, § 2; Ga. L. 2001, p. 873, § 13; Code 1981, § 25-15-13, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-4 as present Code Section 25-15-13, and substituted "office" for "Department of Labor" throughout this Code section; and substituted "article" for "chapter" in the first sentences of paragraph (a)(3) and subsection (b).

25-15-14. Effect on new construction and installation.

No boiler or pressure vessel which does not conform to the rules and regulations of the office governing new construction and installation shall be installed and operated in this state after 12 months from the date upon which the first rules and regulations under this article pertaining to new construction and installation shall have become effective, unless the boiler or pressure vessel is of special design or construction and is not inconsistent with the spirit and safety objectives of such rules and regulations, in which case a special installation and operating permit may at its discretion be granted by the office. (Code 1981, § 34-11-5, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1985, p. 213, § 3; Code 1981, § 25-15-14, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-5 as present Code Section 25-15-14, and, in this Code section, substituted "office" for "Department of Labor" twice, and substituted "article" for "chapter".

25-15-15. Maximum allowable working pressure.

(a) The maximum allowable working pressure of a boiler carrying the ASME Code symbol or of a pressure vessel carrying the ASME or API-ASME symbol shall be determined by the applicable sections of the code under which it was constructed and stamped. Subject to the concurrence of the enforcement authority at the point of installation, such a boiler or pressure vessel may be rerated in accordance with the rules of a later edition of the ASME Code and in accordance with the rules of the National Board Inspection Code or API 510, as applicable.

(b) The maximum allowable working pressure of a boiler or pressure vessel which does not carry the ASME or the API-ASME Code symbol shall be computed in accordance with the Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors.

(c) This article shall not be construed as in any way preventing the use, sale, or reinstallation of a boiler or pressure vessel referred to in this Code section, provided it has been made to conform to the rules and regulations of the office governing existing installations and provided, further, that it has not been found upon inspection to be in an unsafe condition. (Code 1981, § 34-11-6, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 2001, p. 873, § 14; Code 1981, § 25-15-15, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-6 as present Code Section 25-15-15; and, in subsection (c), substituted "article" for "chapter" near the beginning, and substituted "office" for "department" near the middle.

25-15-16. Exceptions.

(a) This article shall not apply to the following boilers and pressure vessels:

(1) Boilers and pressure vessels under federal control or under regulations of 49 C.F.R. 192 and 193;

(2) Pressure vessels used for transportation and storage of compressed or liquefied gases when constructed in compliance with specifications of the United States Department of Transportation and when charged with gas or liquid, marked, maintained, and periodically requalified for use, as required by appropriate regulations of the United States Department of Transportation;

(3) Pressure vessels located on vehicles operating under the rules of other state or federal authorities and used for carrying passengers or freight;

(4) Air tanks installed on the right of way of railroads and used directly in the operation of trains;

(5) Pressure vessels that do not exceed:

(A) Five cubic feet in volume and 250 psig pressure; or

(B) One and one-half cubic feet in volume and 600 psig pressure; or

(C) An inside diameter of six inches with no limitation on pressure;

(6) Pressure vessels having an internal or external working pressure not exceeding 15 psig with no limit on size;

(7) Pressure vessels with a nominal water-containing capacity of 120 gallons or less for containing water under pressure, including

those containing air, the compression of which serves only as a cushion;

(8) Pressure vessels containing water heated by steam or any other indirect means when none of the following limitations are exceeded:

(A) A heat input of 200,000 BTU per hour;

(B) A water temperature of 210 degrees Fahrenheit; and

(C) A nominal water-containing capacity of 120 gallons;

(9) Hot water supply boilers which are directly fired with oil, gas, or electricity when none of the following limitations are exceeded:

(A) Heat input of 200,000 BTU per hour;

(B) Water temperature of 210 degrees Fahrenheit; and

(C) Nominal water-containing capacity of 120 gallons.

These exempt hot water supply boilers shall be equipped with ASME-National Board approved safety relief valves;

(10) Pressure vessels in the care, custody, and control of research facilities and used solely for research purposes which require one or more details of noncode construction or which involve destruction or reduced life expectancy of those vessels;

(11) Pressure vessels or other structures or components that are not considered to be within the scope of ASME Code, Section VIII;

(12) Boilers and pressure vessels operated and maintained for the production and generation of electricity; provided, however, that any person, firm, partnership, or corporation operating such a boiler or pressure vessel has insurance or is self-insured and such boiler or pressure vessel is regularly inspected in accordance with the minimum requirements for safety as defined in the ASME Code by an inspector who has been issued a certificate of competency by the Commissioner in accordance with the provisions of Code Section 25-15-19;

(13) Boilers and pressure vessels operated and maintained as a part of a manufacturing process; provided, however, that any person, firm, partnership, or corporation operating such a boiler or pressure vessel has insurance or is self-insured and such boiler or pressure vessel is regularly inspected in accordance with the minimum requirements for safety as defined in the ASME Code by an inspector who has been issued a certificate of competency by the Commissioner in accordance with the provisions of Code Section 25-15-19;

(14) Boilers and pressure vessels operated and maintained by a public utility; and

(15) Autoclaves used only for the sterilization of reusable medical or dental implements in the place of business of any professional licensed by the laws of this state.

(b) The following boilers and pressure vessels shall be exempt from the requirements of subsections (b), (c), and (d) of Code Section 25-15-23 and Code Sections 25-15-24 and 25-15-26:

(1) Boilers or pressure vessels located on farms and used solely for agricultural or horticultural purposes;

(2) Heating boilers or pressure vessels which are located in private residences or in apartment houses of less than six family units;

(3) Any pressure vessel used as an external part of an electrical circuit breaker or transformer;

(4) Pressure vessels on remote oil or gas-producing lease locations that have fewer than ten buildings intended for human occupancy per 0.25 square mile and where the closest building is at least 220 yards from any vessel;

(5) Pressure vessels used for storage of liquid propane gas under the jurisdiction of the state fire marshal, except for pressure vessels used for storage of liquefied petroleum gas, 2,000 gallons or above, which have been modified or altered; and

(6) Air storage tanks not exceeding 16 cubic feet (120 gallons) in size and under 250 psig pressure. (Code 1981, § 34-11-7, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1985, p. 213, § 4; Ga. L. 1986, p. 10, § 34; Ga. L. 1987, p. 1349, § 2; Ga. L. 1988, p. 13, § 34; Ga. L. 1988, p. 314, § 1; Ga. L. 1989, p. 14, § 34; Ga. L. 1989, p. 465, § 1; Ga. L. 1990, p. 816, § 1; Ga. L. 1993, p. 434, § 1; Ga. L. 1995, p. 914, § 1; Code 1981, § 25-15-16, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-7 as present Code Section 25-15-16; substituted "article" for "chapter" in the introductory language of subsection (a); substituted "49 C.F.R. 192 and 193" for "Title 49 of the Code of Federal Regulations, Parts 192 and 193" in paragraph (a)(1); substituted "25-15-19" for "34-11-10" in paragraphs (a)(12) and (a)(13); and substituted "Code Section 25-15-23 and Code Sections 25-15-24 and 25-15-26" for "Code Section 34-11-14 and Code Sections 34-11-15 and 34-11-16" in the introductory language of subsection (b).

Code Commission notes. — Pursuant to § 28-9-5, in 1986, a hyphen was inserted in "water-containing" in subparagraph (a)(8)(C) and a hyphen was inserted in "gas-producing" in paragraph (b)(4).

Pursuant to § 28-9-5, in 1988, "liquefied" was substituted for "liquified" in paragraph (a)(2).

OPINIONS OF THE ATTORNEY GENERAL

Statutory reference in former O.C.G.A. § 34-11-7(a)(13) (redesignated as O.C.G.A. § 25-15-16(a)(13)) prior to 1989 amendment was typographical error. — See 1988 Op. Att'y Gen. No. 88-24.

Combination potable water heater — space heating units are covered by the Boiler and Pressure Vessel Safety Act, former O.C.G.A. § 34-11-1 et seq. (redesignated as O.C.G.A. § 25-15-10 et seq.) except to the extent those units are clearly exempted under former O.C.G.A. § 34-11-7 (redesignated as O.C.G.A. § 25-15-16). 1989 Op. Att'y Gen. 89-24.

25-15-17. Chief inspector.

(a) The Commissioner may appoint to be chief inspector a citizen of this state or, if not available, a citizen of another state, who shall have had at the time of such appointment not less than five years' experience in the construction, installation, inspection, operation, maintenance, or repair of high pressure boilers and pressure vessels as a mechanical engineer, steam operating engineer, boilermaker, or boiler inspector and who shall have passed the same kind of examination as that prescribed under Code Section 25-15-20. Such chief inspector may be removed for cause after due investigation by the Commissioner.

(b) The chief inspector, if authorized by the Commissioner, is charged, directed, and empowered:

(1) To take action necessary for the enforcement of the laws of this state governing the use of boilers and pressure vessels to which this article applies and of the rules and regulations of the office;

(2) To keep a complete record of the name of each owner or user and his or her location and, except for pressure vessels covered by an owner or user inspection service, the type, dimensions, maximum allowable working pressure, age, and the last recorded inspection of all boilers and pressure vessels to which this article applies;

(3) To publish in print or electronically and make available to anyone requesting them copies of the rules and regulations promulgated by the office;

(4) To issue or to suspend or revoke for cause inspection certificates as provided for in Code Section 25-15-24; and

(5) To cause the prosecution of all violators of the provisions of this article. (Code 1981, § 34-11-8, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1985, p. 149, § 34; Ga. L. 1985, p. 213, § 5; Ga. L. 1987, p. 1349, § 3; Ga. L. 2010, p. 838, § 10/SB 388; Code 1981, § 25-15-17, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraph (b)(3).

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-8 as present Code Section 25-15-17; in subsection (a), substituted "25-15-20" for "34-11-11" at the end of the first sentence, and deleted "the board and its recommendation to" following "investigation by" in the second sentence; substituted "article" for "chapter" in paragraphs (b)(1) and (b)(5); substituted "office" for "department" in paragraphs (b)(1) and (b)(3); substituted "this state" for "the state" near the beginning of paragraph (b)(1); in paragraph (b)(2), inserted "or her" near the middle, and substituted "this article" for "the chapter" near the end; and substituted "25-15-24" for "34-11-15" in paragraph (b)(4).

25-15-18. Deputy inspectors.

The Commissioner may employ deputy inspectors who shall be responsible to the chief inspector and who shall have had at the time of appointment not less than three years' experience in the construction, installation, inspection, operation, maintenance, or repair of high pressure boilers and pressure vessels as a mechanical engineer, steam operating engineer, boilermaker, or boiler inspector and who shall have passed the examination provided for in Code Section 25-15-20. (Code 1981, § 34-11-9, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1985, p. 213, § 6; Code 1981, § 25-15-18, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-9 as present Code Section 25-15-18, and substituted "25-15-20" for "34-11-11" at the end of this Code section.

25-15-19. Special inspectors.

(a) In addition to the deputy inspectors authorized by Code Section 25-15-18 the Commissioner shall, upon the request of any company licensed to insure and insuring in this state boilers and pressure vessels or upon the request of any company operating pressure vessels in this state for which the owner or user maintains a regularly established inspection service which is under the supervision of one or more technically competent individuals whose qualifications are satisfactory to the office and causes such pressure vessels to be regularly inspected and rated by such inspection service in accordance with applicable provisions of the rules and regulations adopted by the office pursuant to Code Section 25-15-13, issue to any inspectors of such insurance company certificates of competency as special inspectors and to any inspectors of such company operating pressure vessels certificates of competency as owner or user inspectors, provided that each such inspector before receiving or her certificate of competency shall satisfactorily pass the examination provided for by Code Section 25-15-20 or, in lieu of such examination, shall hold a commission or a certificate of competency as an inspector of boilers or pressure vessels for a state that

has a standard of examination substantially equal to that of this state or a commission as an inspector of boilers and pressure vessels issued by the National Board of Boiler and Pressure Vessel Inspectors. A certificate of competency as an owner or user inspector shall be issued to an inspector of a company operating pressure vessels in this state only if, in addition to meeting the requirements stated in this Code section, the inspector is employed full time by the company and is responsible for making inspections of pressure vessels used or to be used by such company and which are not for resale.

(b) Such special inspectors or owner or user inspectors shall receive no salary from nor shall any of their expenses be paid by the state, and the continuance of their certificates of competency shall be conditioned upon their continuing in the employ of the boiler insurance company duly authorized or in the employ of the company so operating pressure vessels in this state and upon their maintenance of the standards imposed by this article.

(c) Such special inspectors or owner or user inspectors may inspect all boilers and pressure vessels insured or all pressure vessels operated by their respective companies; and, when so inspected, the owners and users of such boilers and pressure vessels shall be exempt from the payment to the state of the inspection fees as prescribed in rules and regulations promulgated by the Commissioner. (Code 1981, § 34-11-10, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1987, p. 1349, § 4; Ga. L. 1988, p. 13, § 34; Code 1981, § 25-15-19, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-10 as present Code Section 25-15-19; in subsection (a), substituted "such" for "said" throughout, near the beginning, substituted "Code Section 25-15-18" for "Code Section 34-11-9", and, near the middle, twice substituted "office" for "department", substituted "Code Section 25-15-13" for "Code Section 34-11-4", inserted "or her", and substituted "Code Section 25-15-20" for "Code Section 34-11-11"; and, in subsection (b), deleted "as aforesaid" following "duly authorized", and substituted "article" for "chapter" at the end.

Code Commission notes. — Pursuant to § 28-9-5, in 1988, "full time" was substituted for "fulltime" in the last sentence of subsection (a).

25-15-20. Examination of inspectors.

The examination for chief, deputy, special, or owner or user inspectors shall be in writing and shall be held by the office or by an examining board appointed in accordance with the requirements of the National Board of Boiler and Pressure Vessel Inspectors, with at least two members present at all times during the examination. Such examination shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service and may be those prepared by the National Board of

Boiler and Pressure Vessel Inspectors. In case an applicant fails to pass the examination, he or she may appeal to the office for another examination which shall be given by the office or the appointed examining board after 90 days. The record of an applicant's examination shall be accessible to the applicant and his or her employer. (Code 1981, § 34-11-11, enacted by Ga. L. 1984, p. 1227, § 1; Code 1981, § 25-15-20, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-11 as present Code Section 25-15-20, and, in this Code section, substituted "office" for "board" in the first and third sentences, in the third sentence, inserted "or she", and substituted "office or the appointed examining board" for "board", and, in the fourth sentence, substituted "the applicant" for "said applicant" and inserted "or her".

25-15-21. Suspension and revocation of inspector's certificate of competency; hearing; reinstatement.

(a) An inspector's certificate of competency may be suspended by the Commissioner after due investigation for the incompetence or untrustworthiness of the holder thereof or for willful falsification of any matter or statement contained in his or her application or in a report of any inspection made by him or her. Written notice of any such suspension shall be given by the Commissioner within not more than ten days thereof to the inspector and his or her employer. A person whose certificate of competency has been suspended shall be entitled to an appeal as provided in Code Section 25-15-28 and to be present in person and to be represented by counsel at the hearing of the appeal.

(b) If the office has reason to believe that an inspector is no longer qualified to hold his or her certificate of competency, the office shall provide written notice to the inspector and his or her employer of the office's determination and the right to an appeal as provided in Code Section 25-15-28. If, as a result of such hearing, the inspector has been determined to be no longer qualified to hold his or her certificate of competency, the Commissioner shall thereupon revoke such certificate of competency forthwith.

(c) A person whose certificate of competency has been suspended shall be entitled to apply, after 90 days from the date of such suspension, for reinstatement of such certificate of competency. (Code 1981, § 34-11-12, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 2001, p. 873, § 15; Code 1981, § 25-15-21, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-12 as present Code Section 25-15-21; substituted "25-15-28" for "34-11-19" in the last sentence of subsection (a) and in the first sentence of subsection (b); deleted "and recommendation by the office" following "due investigation" in

the first sentence of subsection (a); and, in subsection (b), twice substituted "office" for "department", and substituted "office's" for "department".

25-15-22. Replacement of lost or destroyed certificates of competency.

If a certificate of competency is lost or destroyed, a new certificate of competency shall be issued in its place without another examination. (Code 1981, § 34-11-13, enacted by Ga. L. 1984, p. 1227, § 1; Code 1981, § 25-15-22, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-13 as present Code Section 25-15-22.

25-15-23. Inspections.

(a) The Commissioner, the chief inspector, or any deputy inspector shall have free access, during reasonable hours, to any premises in this state where a boiler or pressure vessel is being constructed for use in, or is being installed in, this state for the purpose of ascertaining whether such boiler or pressure vessel is being constructed and installed in accordance with the provisions of this article.

(b)(1) On and after January 1, 1986, each boiler and pressure vessel used or proposed to be used within this state, except for pressure vessels covered by an owner or user inspection service as described in subsection (d) of this Code section or except for boilers or pressure vessels exempt under Code Section 25-15-16 (owners and users may request to waive this exemption), shall be thoroughly inspected as to their construction, installation, and condition as follows:

(A) Power boilers and high pressure, high temperature water boilers shall receive a certificate inspection annually which shall be an internal inspection where construction permits; otherwise, it shall be as complete an inspection as possible. Such boilers shall also be externally inspected while under pressure, if possible;

(B) Low pressure steam or vapor heating boilers shall receive a certificate inspection biennially with an internal inspection every four years where construction permits;

(C) Hot water heating and hot water supply boilers shall receive a certificate inspection biennially with an internal inspection at the discretion of the inspector;

(D) Pressure vessels subject to internal corrosion shall receive a certificate inspection triennially with an internal inspection at the discretion of the inspector. Pressure vessels not subject to internal corrosion shall receive a certificate of inspection at intervals set by the office; and

(E) Nuclear vessels within the scope of this article shall be inspected and reported in such form and with such appropriate information as the office shall designate.

(2) A grace period of two months beyond the periods specified in subparagraphs (A) through (D) of this paragraph may elapse between certificate inspections.

(3) The office may provide for longer periods between certificate inspection in its rules and regulations.

(4) Under the provisions of this article, the office is responsible for providing for the safety of life, limb, and property and therefore has jurisdiction over the interpretation and application of the inspection requirements as provided for in the rules and regulations which it has promulgated. The person conducting the inspection during construction and installation shall certify as to the minimum requirements for safety as defined in the ASME Code. Inspection requirements of operating equipment shall be in accordance with generally accepted practice and compatible with the actual service conditions, such as:

(A) Previous experience, based on records of inspection, performance, and maintenance;

(B) Location, with respect to personnel hazard;

(C) Quality of inspection and operating personnel;

(D) Provision for related safe operation controls; and

(E) Interrelation with other operations outside the scope of this article.

Based upon documentation of such actual service conditions by the owner or user of the operating equipment, the office may, in its discretion, permit variations in the inspection requirements.

(c) The inspections required in this article shall be made by the chief inspector, by a deputy inspector, by a special inspector, or by an owner or user inspector provided for in this article.

(d) Owner or user inspection of pressure vessels is permitted, provided the owner or user inspection service is regularly established and is under the supervision of one or more individuals whose qualifications are satisfactory to the office and said owner or user causes the pressure vessels to be inspected in conformance with the National Board Inspection Code or API 510, as applicable.

(e) If, at the discretion of the inspector, a hydrostatic test shall be deemed necessary, it shall be made by the owner or user of the boiler or pressure vessel.

(f) All boilers, other than cast iron sectional boilers, and pressure vessels to be installed in this state after the 12 month period from the date upon which the rules and regulations of the office shall become effective shall be inspected during construction as required by the applicable rules and regulations of the office by an inspector authorized to inspect boilers and pressure vessels in this state or, if constructed outside of the state, by an inspector holding a commission issued by the National Board of Boiler and Pressure Vessel Inspectors. (Code 1981, § 34-11-14, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1985, p. 213, § 7; Ga. L. 1987, p. 1349, § 5; Code 1981, § 25-15-23, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-14 as present Code Section 25-15-23; substituted "office" for "board" and substituted "article" for "chapter" throughout this Code section; substituted "this state" for "the state" near the middle of subsection (a); substituted "25-15-16" for "34-11-7" in paragraph (b)(1); added a comma following "otherwise" in subparagraph (b)(1)(A); substituted "office" for "department" in paragraph (b)(3); and substituted "this article, the office" for "this chapter, the department" in paragraph (b)(4).

25-15-24. Filing and maintenance of special investigator's report; issuance and suspension of inspection certificate.

(a) Each company employing special inspectors shall, within 30 days following each certificate inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms as promulgated by the Commissioner. The filing of reports of external inspections, other than certificate inspections, shall not be required except when such inspections disclose that the boiler or pressure vessel is in a dangerous condition.

(b) Each company operating pressure vessels covered by an owner or user inspection service meeting the requirements of subsection (a) of Code Section 25-15-19 shall maintain in its files an inspection record which shall list, by number and such abbreviated description as may be necessary for identification, each pressure vessel covered by this article, the date of the last inspection of each pressure vessel, and the approximate date for the next inspection. The inspection record shall be available for examination by the chief inspector or the chief inspector's authorized representative during business hours.

(c) If the report filed pursuant to subsection (a) of this Code section shows that a boiler or pressure vessel is found to comply with the rules and regulations of the office, the chief inspector, or his or her duly authorized representative, shall issue to such owner or user an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be

operated. Such inspection certificate shall be valid for not more than 14 months from its date in the case of power boilers, 26 months in the case of heating and hot water supply boilers, and 38 months in the case of pressure vessels. In the case of those boilers and pressure vessels covered by subparagraphs (b)(1)(A) through (b)(1)(D) of Code Section 25-15-23 for which the office has established or extended the operating period between required inspections pursuant to the provisions of paragraphs (3) and (4) of subsection (b) of Code Section 25-15-23, the certificate shall be valid for a period of not more than two months beyond the period set by the office. Certificates for boilers shall be posted under glass, or similarly protected, in the room containing the boiler. Pressure vessel certificates shall be posted in like manner, if convenient, or filed where they will be readily accessible for examination.

(d) No inspection certificate issued for an insured boiler or pressure vessel based upon a report of a special inspector shall be valid after the boiler or pressure vessel for which it was issued shall cease to be insured by a company duly authorized by this state to provide such insurance.

(e) The Commissioner or the Commissioner's authorized representative may at any time suspend an inspection certificate after showing cause that the boiler or pressure vessel for which it was issued cannot be operated without menace to the public safety or when the boiler or pressure vessel is found not to comply with the rules and regulations adopted pursuant to this article. Each suspension of an inspection certificate shall continue in effect until such boiler or pressure vessel shall have been made to conform to the rules and regulations of the office and until such inspection certificate shall have been reinstated.

(f) The Commissioner or the Commissioner's authorized representative may issue a written order for the temporary cessation of operation of a boiler or pressure vessel if it has been determined after inspection to be hazardous or unsafe. Operations shall not resume until such conditions are corrected to the satisfaction of the Commissioner or his or her authorized representative. (Code 1981, § 34-11-15, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1987, p. 1349, §§ 6-8; Ga. L. 1988, p. 13, § 34; Ga. L. 1991, p. 258, § 2; Ga. L. 2001, p. 873, § 16; Code 1981, § 25-15-24, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-15 as present Code Section 25-15-24; substituted "office" for "department" throughout this Code section; substituted "article" for "chapter" in subsections (b) and (e); in subsection (b), substituted "25-15-19" for "34-11-10" in the first sentence, and substituted "the chief inspector's" for "his" in the last sentence; in subsection (c), inserted the reference "(b)(1)" preceding "(D)", and twice substituted "25-15-23" for "34-11-14"; substituted "the Commissioner's" for "his" in the first sentence of subsections (e) and (f); substituted "such inspection" for "said

inspection" in the second sentence of subsection (e); and inserted "or her" near the end of subsection (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "certificate" was substituted for "certificates" near the beginning of subsection (d).

25-15-25. Inspections of boilers and pressure vessels.

(a) Boilers and pressure vessels, subject to operating certificate inspections by special, owner, or user inspectors, shall be inspected within 60 calendar days following the required reinspection date. Inspections not performed within this 60 calendar day period shall result in a civil penalty of $500.00 for each boiler or pressure vessel not inspected.

(b)(1) Inspection fees due on boiler and pressure vessels subject to inspection by the chief or deputy inspectors or operating certificate fees due from inspections performed by special, or owner or user, inspectors shall be paid within 60 calendar days of completion of such inspections.

(2) Inspection fees or operating certificate fees unpaid within 60 calendar days shall bear interest at the rate of 1.5 percent per month or any fraction of a month. Interest shall continue to accrue until all amounts due, including interest, are received by the Commissioner.

(c) The Commissioner may waive the collection of the penalties and interest assessed as provided in subsections (a) and (b) of this Code section when it is reasonably determined that the delays in inspection or payment were unavoidable or due to the action or inaction of the office. (Code 1981, § 34-11-15.1, enacted by Ga. L. 1991, p. 258, § 3; Code 1981, § 25-15-25, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-15.1 as present Code Section 25-15-25; substituted "Boilers and pressure vessels, subject to operating certificate inspections by special, owner, or user inspectors, shall be" for "Boilers and pressure vessels subject to operating certificate inspections by special, or owner or user, inspectors shall be" in subsection (a); and substituted "office" for "department" at the end of subsection (c).

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Penalty assessed against entity employing own inspectors. — The entity requesting authorization from the commissioner to employ its own inspectors is responsible for ensuring that inspections pursuant to former O.C.G.A. § 34-11-15.1(a) (redesignated as O.C.G.A. § 25-15-25(a)) are timely performed, and such entity should be assessed the civil penalty when inspections are not timely performed. 1991 Op. Att'y Gen. No. 91-17.

25-15-26. Requirement of valid inspection certificate for operation of a boiler or pressure vessel.

It shall be unlawful for any person, firm, partnership, or corporation to operate in this state a boiler or pressure vessel, except a pressure vessel covered by owner or user inspection service as provided for in Code Section 25-15-24, without a valid inspection certificate. The operation of a boiler or pressure vessel without such inspection certificate or at a pressure exceeding that specified in such inspection certificate or in violation of this article shall constitute a misdemeanor. (Code 1981, § 34-11-16, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 1985, p. 149, § 34; Code 1981, § 25-15-26, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-16 as present Code Section 25-15-26; in the first sentence of this Code section, substituted "It shall be unlawful" for "After 12 months for power boilers, 24 months for low pressure steam heating, hot water heating, and hot water supply boilers, and 36 months for pressure vessels following July 1, 1984, it shall be unlawful", and substituted "25-15-24" for "34-11-15"; and substituted "article" for "chapter" in the second sentence.

25-15-27. Payment of inspection fees.

The owner or user of a boiler or pressure vessel required by this article to be inspected by the chief inspector or a deputy inspector shall pay directly to the chief inspector, upon completion of inspection, fees as prescribed in rules and regulations promulgated by the Commissioner; provided, however, that, with respect to pressure vessel certificates of inspection, such fees shall not exceed $10.00 per annum. The chief inspector shall transfer all fees so received to the general fund of the state treasury. All funds so deposited in the state treasury are authorized to be appropriated by the General Assembly to the Safety Fire Commissioner. (Code 1981, § 34-11-17, enacted by Ga. L. 1991, p. 258, § 4; Code 1981, § 25-15-27, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-17 as present Code Section 25-15-27; in the first sentence of this Code section, substituted "article" for "chapter" near the beginning, and substituted "a deputy" for "his deputy" near the middle; and substituted "Safety Fire Commissioner" for "Commissioner of Labor" in the last sentence.

25-15-28. Appeals.

(a) Any person aggrieved by an order or an act of the Commissioner or the chief inspector under this article may, within 15 days of notice thereof, request a hearing before an administrative law judge of the office of State Administrative Hearings, as provided by Code Section 50-13-41.

(b) Any person aggrieved by a decision of an administrative law judge may file an appeal pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 34-11-19, enacted by Ga. L. 1984, p. 1227, § 1; Ga. L. 2001, p. 873, § 17; Code 1981, § 25-15-28, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-19 as present Code Section 25-15-28, and, in subsection (a), substituted "article" for "chapter", and substituted "office" for "Office".

25-15-29. Limitations on authority of local governments to regulate boilers and pressure vessels.

No county, municipality, or other political subdivision shall have the power to make any laws, ordinances, or resolutions providing for the construction, installation, inspection, maintenance, and repair of boilers and pressure vessels within the limits of such county, municipality, or other political subdivision; and any such laws, ordinances, or resolutions shall be void and of no effect. (Code 1981, § 34-11-20, enacted by Ga. L. 1984, p. 1227, § 1; Code 1981, § 25-15-29, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-20 as present Code Section 25-15-29, and deleted "heretofore made or passed" following "resolutions" near the end of this Code section.

25-15-30. State liability not created.

Neither this article nor any provision of this article shall be construed to place any liability on the State of Georgia, the office, or the Commissioner with respect to any claim by any person, firm, or corporation relating in any way whatsoever to boilers and pressure vessels and any injury or damages arising therefrom. (Code 1981, § 34-11-21, enacted by Ga. L. 1987, p. 1349, § 10; Code 1981, § 25-15-30, as redesignated by Ga. L. 2012, p. 1144, § 2/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-11-21 as present Code Section 25-15-30, and, in this Code section, twice substituted "article" for "chapter", and substituted "office" for "department".

ARTICLE 3

AMUSEMENT RIDE SAFETY

Editor's notes. — Ga. L. 2012, p. 1144, § 3/SB 446, redesignated Chapter 12 of Title 34 as this article.

25-15-50. Short title.

This article shall be known and may be cited as the "Amusement Ride Safety Act." (Code 1981, § 34-12-1, enacted by Ga. L. 1985, p. 1453, § 1; Code 1981, § 25-15-50, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-1 as present Code Section 25-15-50, and substituted "article" for "chapter" in this Code section.

25-15-51. Definitions.

As used in this article, the term:

(1) "Amusement ride" means any mechanical device, other than those regulated by the Consumer Products Safety Commission, which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. Such term shall not include any such device which is not permanently fixed to a site.

(2) "Authorized person" means a competent person experienced and instructed in the work to be performed who has been given the responsibility to perform his or her duty by the owner or his or her representative.

(3) "Certificate fee" means the fee charged by the office for a certificate to operate an amusement ride.

(4) "Certificate of inspection" means a certificate issued by a licensed inspector that an amusement ride meets all relevant provisions of this article and the standards and regulations adopted pursuant thereto.

(5) "Commissioner" means the Safety Fire Commissioner.

(6) "Licensed inspector" means a registered professional engineer or any other person who is found by the office to possess the requisite training and experience to perform competently the inspections required by this article and who is licensed by the office to perform inspections of amusement rides.

(7) "Operator" means a person or persons actually engaged in or directly controlling the operation of an amusement ride.

(8) "Office" means the office of Safety Fire Commissioner, which is designated to enforce the provisions of this article and to formulate and enforce standards and regulations.

(9) "Owner" means a person, including the state or any of its subdivisions, who owns an amusement ride or, in the event that the amusement ride is leased, the lessee.

(10) "Permit" means a permit to operate an amusement ride issued to an owner by the office.

(11) "Permit fee" means the fee charged by the office for a permit to operate an amusement ride.

(12) "Standards and regulations" means those standards and regulations formulated and enforced by the office. (Code 1981, § 34-12-2, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 1986, p. 330, § 1; Ga. L. 1995, p. 366, § 1; Ga. L. 2001, p. 873, § 18; Code 1981, § 25-15-51, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-2 as present Code Section 25-15-51; substituted "article" for "chapter", and substituted "office" for "department" throughout this Code section; deleted former paragraph (1), which read: "Reserved."; redesignated former paragraphs (2) and (3) as present paragraphs (1) and (2), respectively; twice inserted "or her" in paragraph (2); redesignated former paragraph (3.1) as present paragraph (3); substituted "Safety Fire Commissioner" for "Commissioner of Labor" in paragraph (5); deleted former paragraph (6), which read: "'Department' means the Department of Labor, which is designated to enforce the provisions of this chapter and to formulate and enforce standards and regulations."; redesignated former paragraphs (7) and (8) as present paragraphs (6) and (7), respectively; and added paragraph (8).

25-15-52. Consultation with persons knowledgeable in area of amusement rides; creation of committees.

The Commissioner shall be authorized to consult with persons knowledgeable in the area of the amusement ride industry and to create committees composed of such consultants to assist the Commissioner in carrying out his or her duties under this article. (Code 1981, § 34-12-3, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 1989, p. 443, § 3; Ga. L. 2001, p. 873, § 19; Code 1981, § 25-15-52, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-3 as present Code Section 25-15-52, and substituted "article" for "chapter" in this Code section.

25-15-53. Formulation of standards and regulations for rides; related powers and duties.

(a) The office shall formulate standards and regulations, or changes to such standards and regulations, for the safe assembly, disassembly, repair, maintenance, use, operation, and inspection of all amusement rides. The standards and regulations shall be reasonable and based

upon generally accepted engineering standards, formulas, and practices pertinent to the industry. Formulation and promulgation of such standards and regulations shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." It is recognized that risks presented to the general public by amusement rides which are frequently assembled and disassembled are different from those presented by amusement rides which are not frequently assembled and disassembled. Accordingly, the office is authorized to formulate different standards and regulations with regard to such differing classes of amusement rides.

(b) The office shall:

(1) Enforce all standards and regulations;

(2) License inspectors for authorization to inspect amusement rides;

(3) Issue permits upon compliance with this article and such standards and regulations adopted pursuant to this article; and

(4) Establish a fee schedule for the issuance of permits for amusement rides. (Code 1981, § 34-12-5, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 2001, p. 873, § 20; Code 1981, § 25-15-53, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-5 as present Code Section 25-15-53; substituted "office" for "department" throughout this Code section; and twice substituted "article" for "chapter" in paragraph (b)(3).

25-15-54. Licensing of private inspectors.

The office may license such private inspectors as may be necessary to carry out the provisions of this article. (Code 1981, § 34-12-6, enacted by Ga. L. 1985, p. 1453, § 1; Code 1981, § 25-15-54, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-6 as present Code Section 25-15-54, and, in this Code section, substituted "office" for "department" near the beginning, and substituted "article" for "chapter" at the end.

25-15-55. Application for permit to operate rides; operation prior to issuance of permit; certificate of inspection.

(a) No amusement ride shall be operated, except for purposes of testing and inspection, until a permit for its operation has been issued by the office. The owner of an amusement ride shall apply for a permit

to the office on a form furnished by the office providing such information as the office may require.

(b) No such application shall be complete without including a certificate of inspection from a licensed inspector that the amusement ride meets all relevant provisions of this article and the standards and regulations adopted pursuant thereto. The cost of obtaining the certificate of inspection from a licensed inspector shall be borne by the owner or operator. (Code 1981, § 34-12-7, enacted by Ga. L. 1985, p. 1453, § 1; Code 1981, § 25-15-55, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-7 as present Code Section 25-15-55; substituted "office" for "department" throughout subsection (a); and substituted "article" for "chapter" in the first sentence of subsection (b).

25-15-56. Amusement ride inspection; issuance of certificate of inspection.

(a) All amusement rides shall be inspected annually, and may be inspected more frequently, by a licensed inspector at the owner's or operator's expense. If the amusement ride meets all relevant provisions of this article and the standards and regulations adopted pursuant to this article, the licensed inspector shall provide to the owner or operator a certificate of inspection. All new amusement rides shall be inspected before commencing public operation.

(b) Amusement rides and attractions may be required to be inspected by an authorized person each time they are assembled or disassembled in accordance with regulations and standards established under this article. (Code 1981, § 34-12-8, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 1986, p. 10, § 34; Code 1981, § 25-15-56, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-8 as present Code Section 25-15-56, and substituted "article" for "chapter" throughout this Code section.

25-15-57. Waiver of ride inspection requirement.

The office may waive the requirement of subsection (a) of Code Section 25-15-56 if the owner of an amusement ride gives satisfactory proof to the office that the amusement ride has passed an inspection conducted by a federal agency or by another state whose standards and regulations for the inspection of such an amusement ride are at least as stringent as those adopted pursuant to this article. (Code 1981, § 34-12-9, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 1995, p. 366, § 2;

Code 1981, § 25-15-57, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-9 as present Code Section 25-15-57, and, in this Code section, substituted "office" for "department" twice, substituted "28-15-56" for "34-12-8", and substituted "article" for "chapter".

25-15-58. Issuance of permits.

The office shall issue a permit to operate an amusement ride to the owner thereof upon successful completion of a safety inspection of the amusement ride conducted by a licensed inspector and upon receiving an application for permit with a certificate of insurance. The permit shall be valid for the calendar year in which issued. (Code 1981, § 34-12-10, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 1995, p. 366, § 3; Code 1981, § 25-15-58, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-10 as present Code Section 25-15-58, and substituted "office" for "department" in the first sentence of this Code section.

25-15-59. Owner recordkeeping.

The owner shall maintain up-to-date maintenance, inspection, and repair records between inspection periods for each amusement ride in accordance with such standards and regulations as are adopted pursuant to this article. Such records shall contain a copy of all inspection reports commencing with the last annual inspection, a description of all maintenance performed, and a description of any mechanical or structural failures or operational breakdowns and the types of actions taken to rectify these conditions. (Code 1981, § 34-12-11, enacted by Ga. L. 1985, p. 1453, § 1; Code 1981, § 25-15-59, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-11 as present Code Section 25-15-59, and substituted "article" for "chapter" in the first sentence of this Code section.

25-15-60. Ride operators; minimum age.

No person shall be permitted to operate an amusement ride unless he or she is at least 16 years of age. An operator shall be in attendance at all times that an amusement ride is in operation and shall operate no more than one amusement ride at any given time. (Code 1981, § 34-12-12, enacted by Ga. L. 1985, p. 1453, § 1; Code 1981, § 25-15-60, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-12 as present Code Section 25-15-60, and inserted "or she" in this Code section.

25-15-61. Accident reports.

The owner of the amusement ride shall report to the office any accident resulting in a fatality or an injury requiring immediate inpatient overnight hospitalization incurred during the operation of any amusement ride. The report shall be in writing, shall describe the nature of the occurrence and injury, and shall be mailed by first-class mail no later than the close of the next business day following the accident. Accidents resulting in a fatality shall also be reported immediately to the office in person or by phone in accordance with regulations adopted by the office. (Code 1981, § 34-12-13, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 2001, p. 873, § 21; Code 1981, § 25-15-61, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-13 as present Code Section 25-15-61, and substituted "office" for "department" throughout this Code section.

25-15-62. Liability insurance, bond, cash, or security coverage.

(a) No person shall operate an amusement ride unless at the time there is in existence:

(1) A policy of insurance in an appropriate amount determined by regulation insuring the owner and operator (if an independent contractor) against liability for injury to persons arising out of the operation of the amusement ride;

(2) A bond in a like amount; provided, however, that the aggregate liability of the surety under such bond shall not exceed the face amount thereof; or

(3) Cash or other security acceptable to the office.

(b) Regulations under this article shall permit appropriate deductibles or self-insured retention amounts to such policies of insurance. The policy or bond shall be procured from one or more insurers or sureties acceptable to the office. (Code 1981, § 34-12-14, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 1988, p. 1632, § 1; Code 1981, § 25-15-62, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-14 as present Code Section 25-15-62; substituted "office" for "department" in paragraph (a)(3) and in the second sentence of subsection (b); and substituted "article" for "chapter" in the first sentence of subsection (b).

25-15-63. Variances.

If any person would incur practical difficulties or unnecessary hardships in complying with the standards and regulations adopted pursuant to this article, or if any person is aggrieved by any order issued by the office, the person may make a written application to the office stating his or her grounds and applying for a variance. The office may grant such a variance in the spirit of the provisions of this article with due regard to public safety. The granting or denial of a variance by the office shall be in writing and shall describe the conditions under which the variance is granted or the reasons for denial. A record shall be kept of all variances granted by the office and such record shall be open to inspection by the public. (Code 1981, § 34-12-15, enacted by Ga. L. 1985, p. 1453, § 1; Code 1981, § 25-15-63, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-15 as present Code Section 25-15-63, and, in this Code section, substituted "office" for "department" throughout, substituted "article" for "chapter" in the first and second sentences, inserted "or her" near the end of the first sentence, and deleted "the" preceding "public safety" near the end of the second sentence.

25-15-64. Applicability of article.

This article shall not apply to any single-passenger coin operated amusement ride on a stationary foundation or to playground equipment such as swings, seesaws, slides, jungle gyms, rider propelled merry-go-rounds, moonwalks, and live rides. (Code 1981, § 34-12-16, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 1988, p. 1632, § 2; Code 1981, § 25-15-64, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-16 as present Code Section 25-15-64, and substituted "article" for "chapter" near the beginning of this Code section.

25-15-65. Use of existing rides; period for compliance.

This article shall not be construed so as to prevent the use of any existing amusement ride found to be in a safe condition and to be in conformance with the standards and regulations adopted pursuant to this article. Owners of amusement rides in operation on or before the effective date of this article shall comply with the provisions of this article and the standards and regulations adopted pursuant to this article within six months after the adoption of such standards and regulations. (Code 1981, § 34-12-17, enacted by Ga. L. 1985, p. 1453, § 1; Code 1981, § 25-15-65, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-17 as present Code Section 25-15-65, and, in this Code section, substituted "article" for "chapter" throughout, and substituted "such standards" for "said standards" near the end of the last sentence.

25-15-66. Order for temporary cessation; injunction; penalties.

(a) The Commissioner or the Commissioner's authorized representative may issue a written order for the temporary cessation of operation of an amusement ride if it has been determined after inspection to be hazardous or unsafe. Operations shall not resume until such conditions are corrected to the satisfaction of the Commissioner or the Commissioner's authorized representative.

(b) In the event that an owner or operator knowingly allows the operation of an amusement ride after the issuing of a temporary cessation, the Commissioner or the Commissioner's authorized representative may initiate in the superior court any action for an injunction or writ of mandamus upon the petition of the district attorney or Attorney General. An injunction, without bond, may be granted by the superior court to the Commissioner for the purpose of enforcing this article.

(c)(1) Any person, firm, partnership, or corporation violating the provisions of this article shall be guilty of a misdemeanor. Each day of violation shall constitute a separate offense.

(2) In addition to the penalty provisions in paragraph (1) of this subsection, the Commissioner shall have the power, after notice and hearing, to levy civil penalties as prescribed in the rules and regulations of the office in an amount not to exceed $5,000.00 upon any person, firm, partnership, or corporation failing to adhere to the requirements of this article and the rules and regulations promulgated under this article. The imposition of a penalty for a violation of this article or the rules and regulations promulgated under this article shall not excuse the violation or permit it to continue. (Code 1981, § 34-12-18, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 1988, p. 1632, § 3; Ga. L. 1995, p. 366, § 4; Code 1981, § 25-15-66, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-18 as present Code Section 25-15-66; substituted "article" for "chapter" throughout this Code section; substituted "the Commissioner's authorized representative" for "his authorized representative" twice in subsection (a) and in the first sentence of subsection (b); and substituted "office" for "department" near the middle of the first sentence of paragraph (c)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, a misspelling of "Commissioner's" was corrected in the first sentence of subsection (b).

25-15-67. Right of owner or operator to deny entry to rides; inspector's right of access.

The owner or operator of an amusement ride may deny entry to a person to an amusement ride if in the owner's or operator's opinion the entry may jeopardize the safety of such person or the safety of any other person. Nothing in this Code section shall permit an owner or operator to deny an inspector access to an amusement ride when such inspector is acting within the scope of his or her duties under this article. (Code 1981, § 34-12-19, enacted by Ga. L. 1985, p. 1453, § 1; Ga. L. 1986, p. 10, § 34; Code 1981, § 25-15-67, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-19 as present Code Section 25-15-67, and, in the last sentence of this Code section, substituted "shall permit" for "will permit", inserted "or her", and substituted "article" for "chapter".

25-15-68. State liability not created.

Neither this article nor any provision of this article shall be construed to place any liability on the State of Georgia, the office, or the Commissioner with respect to any claim by any person, firm, or corporation relating in any way whatsoever to amusement rides and any injury or damages arising therefrom. (Code 1981, § 34-12-20, enacted by Ga. L. 1985, p. 1453, § 1; Code 1981, § 25-15-68, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-20 as present Code Section 25-15-68, and, in this Code section, substituted "article" for "chapter" twice, and substituted "office" for "department".

25-15-69. Regulation of amusement rides by counties, municipalities, and other political subdivisions.

No county, municipality, or other political subdivision shall have the power to pass ordinances, resolutions, or other requirements regulating the construction, installation, inspection, maintenance, repair, or operation of amusement rides within the limits of such county, municipality, or other political subdivision. Any such ordinances, resolutions, or other requirements shall be void and of no effect; provided, however, that the provisions of this Code section shall not apply to local zoning ordinances or ordinances regulating location, siting requirements, or other development standards or conditions relative to amusement rides or their time of operation or noise levels generated. Nothing in this article preempts the imposition of regulatory fees or occupation taxes imposed by counties and municipalities pursuant to Chapter 13 of Title 48.

(Code 1981, § 34-12-21, enacted by Ga. L. 1995, p. 366, § 5; Code 1981, § 25-15-69, as redesignated by Ga. L. 2012, p. 1144, § 3/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-12-21 as present Code Section 25-15-69, and, in this Code section, deleted "heretofore passed" preceding "shall be void" in the second sentence, and substituted "article" for "chapter" in the last sentence.

ARTICLE 4

CARNIVAL RIDE SAFETY

Editor's notes. — Ga. L. 2012, p. 1144, § 4/SB 446, redesignated Chapter 13 of Title 34 as this article.

25-15-80. Short title.

This article shall be known and may be cited as the "Carnival Ride Safety Act." (Code 1981, § 34-13-1, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-80, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-1 as present Code Section 25-15-80, and, in this Code section, substituted "article" for "chapter".

25-15-81. Definitions.

As used in this article, the term:

(1) "Authorized person" means a competent person experienced and instructed in the work to be performed who has been given the responsibility to perform his or her duty by the owner or the owner's representative.

(2) "Carnival ride" means any mechanical device, other than amusement rides regulated under Article 3 of this chapter, known as the "Amusement Ride Safety Act," which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. Such term shall not include any such device which is permanently fixed to a site.

(3) "Certificate fee" means the fee charged by the office for a certificate to operate a carnival ride.

(4) "Certificate of inspection" means a certificate issued by a licensed inspector that a carnival ride meets all relevant provisions of this article and the standards and regulations adopted pursuant thereto.

(5) "Commissioner" means the Safety Fire Commissioner.

(6) "Licensed inspector" means a registered professional engineer or any other person who is found by the office to possess the requisite training and experience to perform competently the inspections required by this article and who is licensed by the office to perform inspections of carnival rides.

(7) "Office" means the office of Safety Fire Commissioner, which is designated to enforce the provisions of this article and to formulate and enforce standards and regulations.

(8) "Operator" means a person or persons actually engaged in or directly controlling the operation of a carnival ride.

(9) "Owner" means a person, including the state or any of its subdivisions, who owns a carnival ride or, in the event that the carnival ride is leased, the lessee.

(10) "Permit" means a permit to operate a carnival ride issued to an owner by the office.

(11) "Permit fee" means the fee charged by the office for a permit to operate a carnival ride.

(12) "Standards and regulations" means those standards and regulations formulated and enforced by the office. (Code 1981, § 34-13-2, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Ga. L. 1992, p. 6, § 34; Ga. L. 1995, p. 366, § 6; Ga. L. 2001, p. 873, § 22; Code 1981, § 25-15-81, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-2 as present Code Section 25-15-81; substituted "article" for "chapter" and substituted "office" for "department" throughout this Code section; deleted former paragraph (1), which read: "Reserved."; redesignated former paragraph (2) as present paragraph (1), and, in paragraph (1), inserted "or her"; redesignated former paragraph (3) as present paragraph (2), and, in paragraph (2), substituted "Article 3 of this chapter" for "Chapter 12 of this title" in the first sentence; redesignated former paragraph (3.1) as present paragraph (3); substituted "Safety Fire Commissioner" for "Commissioner of Labor" in paragraph (5); deleted former paragraph (6), which read: "'Department' means the Department of Labor, which is designated to enforce the provisions of this chapter and to formulate and enforce standards and regulations."; redesignated former paragraph (7) as present paragraph (6); and added present paragraph (7).

25-15-82. Authority to consult.

The Commissioner shall be authorized to consult with persons knowledgeable in the area of the carnival ride industry and to create committees composed of such consultants to assist the Commissioner in carrying out his or her duties under this article. (Code 1981, § 34-13-3,

enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1989, p. 443, § 4; Ga. L. 1990, p. 1945, § 1; Ga. L. 2001, p. 873, § 23; Code 1981, § 25-15-82, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-3 as present Code Section 25-15-82, and substituted "article" for "chapter" in this Code section.

25-15-83. Safety standards and regulations; licensing of inspectors; ride permits; fees.

(a) The office shall formulate standards and regulations, or changes to such standards and regulations, for the safe assembly, disassembly, repair, maintenance, use, operation, and inspection of all carnival rides. The standards and regulations shall be reasonable and based upon generally accepted engineering standards, formulas, and practices pertinent to the industry. Formulation and promulgation of such standards and regulations shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) The office shall:

(1) Enforce all standards and regulations;

(2) License inspectors for authorization to inspect carnival rides; and

(3) Issue permits upon compliance with this article and such standards and regulations adopted pursuant to this article.

(c) The owner or operator of a carnival ride required to be inspected shall pay fees as prescribed in rules and regulations promulgated by the Commissioner. The chief inspector shall transfer all fees so received to the general fund of the state treasury. All funds so deposited in the state treasury are authorized to be appropriated by the General Assembly to the Safety Fire Commissioner. (Code 1981, § 34-13-5, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Ga. L. 1991, p. 258, § 5; Ga. L. 2001, p. 873, § 24; Code 1981, § 25-15-83, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-5 as present Code Section 25-15-83; substituted "office" for "department" near the beginning of subsection (a) and in the introductory paragraph of subsection (b); deleted the fourth sentence of subsection (a), which read: "No rule, regulation, or standard promulgated or adopted pursuant to this chapter article shall become effective prior to January 1, 1987."; twice substituted "article" for "chapter" in paragraph (b)(3); and substituted "Safety Fire Commissioner" for "Commissioner of Labor" at the end of the last sentence of subsection (c).

25-15-84. Licensing of private inspectors.

The office may license such private inspectors as may be necessary to carry out the provisions of this article. (Code 1981, § 34-13-6, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-84, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-6 as present Code Section 25-15-84, and, in this Code section, substituted "office" for "department", and substituted "article" for "chapter".

25-15-85. Permit required; application.

No carnival ride shall be operated in any calendar year, except for purposes of testing and inspection, until a permit for its operation has been issued by the office. The owner of a carnival ride shall apply for a permit to the office on a form furnished by the office, providing such information as the office may require. (Code 1981, § 34-13-7, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1988, p. 950, § 1; Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-85, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-7 as present Code Section 25-15-85, and substituted "office" for "department" throughout this Code section.

25-15-86. Inspections.

All carnival rides and attractions shall be inspected annually and may be inspected more frequently by a licensed inspector at the owner's or operator's expense. If the carnival ride meets all relevant provisions of this article and the standards and regulations adopted pursuant to this article, the licensed inspector shall provide to the owner or operator a certificate of inspection. All new carnival rides shall be inspected before commencing public operation. (Code 1981, § 34-13-8, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Ga. L. 1991, p. 258, § 6; Code 1981, § 25-15-86, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-8 as present Code Section 25-15-86, and, in this Code section, substituted "a licensed inspector" for "the Office of Safety Engineering of the department" in the first sentence, and twice substituted "article" for "chapter" in the second sentence.

25-15-87. Waiver of inspection for rides inspected by other entity.

The office may waive the requirement of Code Section 25-15-86 if the owner of a carnival ride gives satisfactory proof to the office that the carnival ride has passed an inspection conducted by a federal agency or by another state whose standards and regulations for the inspection of such a carnival ride are at least as stringent as those adopted pursuant to this article. (Code 1981, § 34-13-9, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Ga. L. 1995, p. 366, § 7; Code 1981, § 25-15-87, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-9 as present Code Section 25-15-87, and, in this Code section, substituted "office" for "department" twice, substituted "25-15-86" for "34-13-8", and substituted "article" for "chapter" at the end.

25-15-88. Issuance of permit.

The office shall issue a permit to operate a carnival ride to the owner thereof upon successful completion of a safety inspection by a licensed inspector, upon completion by the owner of the application for a permit, and upon presentation of a certificate of inspection or waiver thereof by the office. The permit shall be valid for the calendar year in which issued. (Code 1981, § 34-13-10, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1988, p. 950, § 2; Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-88, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-10 as present Code Section 25-15-88, and twice substituted "office" for "department" in the first sentence of this Code section.

25-15-89. Maintenance, inspection, and repair records.

The owner shall maintain up-to-date maintenance, inspection, and repair records between inspection periods for each carnival ride in accordance with such standards and regulations as are adopted pursuant to this article. Such records shall contain a copy of all inspection reports commencing with the last annual inspection, a description of all maintenance performed, and a description of any mechanical or structural failures or operational breakdowns and the types of actions taken to rectify these conditions. (Code 1981, § 34-13-11, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-89, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-11 as present Code Section 25-15-89, and substituted "article" for "chapter" in the first sentence of this Code section.

25-15-90. Ride operators; minimum standards for operation of rides.

(a) No person shall be permitted to operate a carnival ride unless he or she is at least 16 years of age. An operator shall be in attendance at all times that a carnival ride is in operation and shall operate no more than one carnival ride at any given time.

(b) No carnival ride shall be operated at standards below those recommended by the manufacturer of such carnival ride or below the standards adopted or variants approved by the office, whichever is greater. (Code 1981, § 34-13-12, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-90, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-12 as present Code Section 25-15-90; inserted "or she" in the first sentence of subsection (a); and substituted "office" for "department" near the end of subsection (b).

25-15-91. Accident reports.

The owner of the carnival ride shall report to the office any accident incurred during the operation of any carnival ride resulting in a fatality or an injury requiring medical attention from a licensed medical facility. The report shall be in writing, shall describe the nature of the occurrence and injury, and shall be delivered in person or mailed by first-class mail no later than the close of the next business day following the accident. Accidents resulting in a fatality shall also be reported immediately to the office in person or by phone in accordance with regulations adopted by the office. (Code 1981, § 34-13-13, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1988, p. 950, § 3; Ga. L. 1990, p. 1945, § 1; Ga. L. 2001, p. 873, § 25; Code 1981, § 25-15-91, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-13 as present Code Section 25-15-91, and substituted "office" for "department" throughout this Code section.

25-15-92. Liability insurance, bond, or other security required.

(a) No person shall operate a carnival ride unless at the time there is in existence:

(1) A policy of insurance in an amount not less than $1 million (if an independent contractor) against liability for injury to persons arising out of the operation of the carnival ride;

(2) A bond in a like amount; provided, however, that the aggregate liability of the surety under such bond shall not exceed the face amount thereof; or

(3) Cash or other security acceptable to the office.

(b) Regulations under this article shall permit appropriate deductibles or self-insured retention amounts to such policies of insurance. The policy or bond shall be procured from one or more insurers or sureties acceptable to the office. (Code 1981, § 34-13-14, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1988, p. 950, § 4; Ga. L. 1990, p. 1945, § 1; Ga. L. 1991, p. 94, § 34; Code 1981, § 25-15-92, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-14 as present Code Section 25-15-92; substituted "office" for "department" at the end of paragraph (a)(3) and at the end of subsection (b); and substituted "article" for "chapter" in the first sentence of subsection (b).

25-15-93. Variances from standards and regulations.

If any person would incur practical difficulties or unnecessary hardships in complying with the standards and regulations adopted pursuant to this article, or if any person is aggrieved by any order issued by the office, the person may make a written application to the office stating his or her grounds and applying for a variance. The office may grant such a variance in the spirit of the provisions of this article with due regard to public safety. The granting or denial of a variance by the office shall be in writing and shall describe the conditions under which the variance is granted or the reasons for denial. A record shall be kept of all variances granted by the office and such record shall be open to inspection by the public. (Code 1981, § 34-13-15, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-93, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-15 as present Code Section 25-15-93, and, in this Code section, substituted "office" for "department" throughout, substituted "article" for "chapter" in the first and second sentences, and inserted "or her" near the end of the first sentence.

25-15-94. Exempted rides.

This article shall not apply to any single-passenger coin operated carnival ride on a stationary foundation or to playground equipment such as swings, seesaws, slides, jungle gyms, rider propelled merry-go-rounds, moonwalks, and live rides. (Code 1981, § 34-13-16, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1988, p. 950, § 5; Ga. L. 1990,

p. 1945, § 1; Code 1981, § 25-15-94, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-16 as present Code Section 25-15-94, and substituted "article" for "chapter" near the beginning of this Code section.

25-15-95. Existing rides.

This article shall not be construed so as to prevent the use of any existing carnival ride found to be in a safe condition and to be in conformance with the standards and regulations adopted pursuant to this article. (Code 1981, § 34-13-17, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-95, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-17 as present Code Section 25-15-95, and, in this Code section, twice substituted "article" for "chapter" in the first sentence, and deleted the second sentence, which read: "Owners of carnival rides in operation on or before March 26, 1986, shall comply with the provisions of this chapter and the standards and regulations adopted pursuant to this chapter within six months after the adoption of said standards and regulations."

25-15-96. Order for temporary cessation; injunction; penalties.

(a) The Commissioner or the Commissioner's authorized representative may issue a written order for the temporary cessation of operation of a carnival ride if it has been determined after inspection to be hazardous or unsafe. Operations shall not resume until such conditions are corrected to the satisfaction of the Commissioner or the Commissioner's authorized representative.

(b) In the event that an owner or operator knowingly allows the operations of a carnival ride after the issuing of a temporary cessation, the Commissioner or the Commissioner's authorized representative may initiate in the superior court any action for an injunction or writ of mandamus upon the petition of the district attorney or Attorney General. An injunction, without bond, may be granted by the superior court to the Commissioner for the purpose of enforcing this article.

(c)(1) Any person, firm, partnership, or corporation violating the provisions of this article shall be guilty of a misdemeanor. Each day of violation shall constitute a separate offense.

(2) In addition to the penalty provisions in paragraph (1) of this subsection, the Commissioner shall have the power, after notice and hearing, to levy civil penalties as prescribed in the rules and regulations of the office in an amount not to exceed $5,000.00 upon any person, firm, partnership, or corporation failing to adhere to the

requirements of this article and the rules and regulations promulgated under this article. The imposition of a penalty for a violation of this article or the rules and regulations promulgated under this article shall not excuse the violation or permit it to continue. (Code 1981, § 34-13-18, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1988, p. 950, § 6; Ga. L. 1990, p. 1945, § 1; Ga. L. 1995, p. 366, § 8; Code 1981, § 25-15-96, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-18 as present Code Section 25-15-96; substituted "article" for "chapter" throughout this Code section; substituted "the Commissioner's authorized representative" for "his authorized representative" in the first and second sentences of subsection (a) and in the first sentence of subsection (b); and substituted "office" for "department" near the middle of the first sentence of paragraph (c)(2).

25-15-97. Owner or operator denying individual entry to ride.

The owner or operator of a carnival ride may deny entry to a person to a carnival ride if in the owner's or operator's opinion the entry may jeopardize the safety of such person or the safety of any other person. Nothing in this Code section shall permit an owner or operator to deny an inspector access to a carnival ride when such inspector is acting within the scope of his or her duties under this article. (Code 1981, § 34-13-19, enacted by Ga. L. 1986, p. 330, § 2; Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-97, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-19 as present Code Section 25-15-97, and, in the second sentence of this Code section, substituted "shall permit" for "will permit", inserted "or her", and substituted "article" for "chapter".

25-15-98. Posting of age, size, and weight requirements for rides.

(a) The owner or operator of a carnival ride shall post a clearly visible sign at the location of each ride and at the location of tickets sales for each ride which states any age, weight, or height requirements of the ride which are necessary as a safeguard against injury.

(b) It shall be unlawful for any owner or operator to permit entry to a carnival ride to any person who does not meet the posted age, size, and weight requirements for such ride. (Code 1981, § 34-13-20, enacted by Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-98, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-20 as present Code Section 25-15-98.

25-15-99. Itinerant carnival rides to be continuously registered with in-state agent.

The owner of any itinerant carnival ride which is located within this state shall continuously maintain in this state a registered agent of record who may be an individual who resides in the state and whose business address is identical with the address of the owner's required office. (Code 1981, § 34-13-21, enacted by Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-99, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-21 as present Code Section 25-15-99, and, in this Code section, substituted "within this state shall" for "within the state must" near the beginning, and substituted "registered agent of record who may" for "registered agent of record, which agent may" near the middle.

25-15-100. State liability not created.

Neither this article nor any provision of this article shall be construed to place any liability on the State of Georgia, the office, or the Commissioner with respect to any claim by any person, firm, or corporation relating in any way whatsoever to carnival rides and any injury or damages arising therefrom. (Code 1981, § 34-13-20, enacted by Ga. L. 1986, p. 330, § 2; Code 1981, § 34-13-22, as redesignated by Ga. L. 1990, p. 1945, § 1; Code 1981, § 25-15-100, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-22 as present Code Section 25-15-100, and, in this Code section, twice substituted "article" for "chapter" near the beginning, and substituted "office" for "department" near the middle.

25-15-101. Regulation of carnival rides by counties, municipalities, and other political subdivisions.

No county, municipality, or other political subdivision shall have the power to pass ordinances, resolutions, or other requirements regulating the construction, installation, inspection, maintenance, repair, or operation of carnival rides within the limits of such county, municipality, or other political subdivision. Any such ordinances, resolutions, or other requirements shall be void and of no effect; provided, however, that the provisions of this Code section shall not apply to local zoning ordinances or ordinances regulating location, siting requirements, or other development standards or conditions relative to carnival rides or their time of operation or noise levels generated. Nothing in this article preempts the imposition of regulatory fees or occupation taxes imposed by counties and municipalities pursuant to Chapter 13 of Title 48. (Code

1981, § 34-13-23, enacted by Ga. L. 1995, p. 366, § 9; Code 1981, § 25-15-101, as redesignated by Ga. L. 2012, p. 1144, § 4/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-13-23 as present Code Section 25-15-101, and, in this Code section, deleted "heretofore passed" preceding "shall be void" in the second sentence, and substituted "article" for "chapter" in the last sentence.

ARTICLE 5

REQUIREMENTS FOR SCAFFOLDING AND STAGING DESIGN

25-15-110. Requirements for scaffolding and staging design; inspection by Safety Fire Comissioner.

(a)(1) All scaffolding or staging that is swung or suspended from an overhead support or erected with stationary supports and is suspended or rises 30 feet or more above the ground shall have a safety rail properly attached, bolted, braced, and otherwise secured; and the safety rail shall rise at least 34 inches above the floor or main portions of such scaffolding or staging and extend for the full length of such staging and along the ends thereof with only such openings as may be necessary for the delivery of materials being used on such scaffold or staging. Such scaffolding or staging shall also be so fastened as to prevent it from swaying from the building or structure. However, this paragraph shall not apply to any scaffolding or staging which is wholly within the interior of a building or other structure and which covers the entire floor space therein.

(2) It shall be unlawful for any person to employ or direct others to perform labor of any kind in the erecting, demolishing, repairing, altering, cleaning, or painting of a building or other structure without first having furnished proper protection to such person so employed or directed, as provided in paragraph (1) of this subsection.

(b) All scaffolding or staging shall be so constructed that it will bear at least four times the weight required to be hanging therefrom or placed thereon when in use.

(c)(1) The Safety Fire Commissioner, upon receipt of any complaint, shall make or cause to be made an immediate inspection of the scaffold, or mechanical device connected therewith, concerning which complaint has been made.

(2) The Commissioner shall attach to every scaffold, staging, mechanism, or mechanical device inspected by him or her a certificate bearing the Commissioner's name and the date of inspection, and the certificate shall plainly state whether he or she has found the scaffolding, staging, or mechanical device "safe" or "unsafe."

(3) If the Commissioner finds any scaffolding, staging, or mechanical device complained of to be unsafe, the Commissioner shall at once notify in writing the person responsible for the erection and maintenance of the scaffolding, staging, or mechanical device that the Commissioner has found it to be unsafe. Such notice may be served personally upon the person responsible under the law or may be perfected by affixing such notice in a conspicuous place on the scaffold, staging, or mechanical device found unsafe. The manner of service shall be within the discretion of the Commissioner. The Commissioner shall then prohibit the use of such scaffolding, staging, or mechanical device by any person until all danger has been removed or until it has been made to comply with the terms of this Code section by alteration, reconstruction, demolition, or replacement, as the Commissioner may direct.

(d) Any person who willfully, knowingly, and persistently continues the use of a scaffold, staging, or other mechanical device in violation of any provision of this Code section shall be guilty of a misdemeanor. (Ga. L. 1933, p. 111, §§ 1-7; Ga. L. 1967, p. 792, § 1; Code 1981, § 34-1-1; Code 1981, § 25-15-110, as redesignated by Ga. L. 2012, p. 1144, § 6/SB 446.)

The 2012 amendment, effective May 2, 2012, redesignated former Code Section 34-1-1 as present Code Section 25-15-110 and as a part of a new article of Chapter 15 of Title 25; in paragraph (a)(1), in the first sentence, inserted "that is" near the beginning, substituted "supports and is" for "supports, which scaffolding or staging is", deleted a comma following "ground", and substituted "secured; and the safety" for "secured, which safety"; in paragraph (c)(1), substituted "Safety Fire Commissioner" for "Commissioner of Labor"; in paragraph (c)(2), inserted "or her" following "by him", substituted "the Commissioner's name" for "his name", substituted "and the certificate shall" for "on which certificate he shall", and inserted "or she"; and, in paragraph (c)(3), substituted "Commissioner" for "Commissioner of Labor" in the first and third sentences, and substituted "the Commissioner" for "he" in the first sentence.

TITLE 26

FOOD, DRUGS, AND COSMETICS

Chap.

CHAPTER 2

STANDARDS, LABELING, AND ADULTERATION OF FOOD

Article 2

Adulteration and Misbranding of Food

Sec.

Article 3

Meat Inspection

PART 1

GENERAL PROVISIONS

PART 2

ENFORCEMENT OF ARTICLE

PART 3

INSPECTION OF ANIMALS, CARCASSES, MEAT, AND MEAT FOOD PRODUCTS; ADULTERATION AND MISBRANDING

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Foreign Substance in Food or Beverage, 30 POF2d 1.

Food Poisoning, 31 POF2d 31.

ARTICLE 1

GENERAL PROVISIONS

26-2-1. Definitions of and standards for lard, mixed edible fats, and cottonseed oils.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 12 Am. Jur. Pleading and Practice Forms, Food, § 3.

ARTICLE 2

ADULTERATION AND MISBRANDING OF FOOD

26-2-21. Definitions.

(a) As used in this article, the term:

(1) "Commissioner" means the Commissioner of Agriculture.

(2) "Contaminated with filth" applies to any food not securely protected from dust, dirt, and, as far as may be necessary, by all reasonable means, from all foreign or injurious contamination.

(3) "Federal act" means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. Section 301, et seq., 52 Stat. Section 1040, et seq.).

(4) "Food" means:

(A) Articles used for food or drink for human consumption;

(B) Chewing gum; and

(C) Articles used for components of any such articles.

(5) "Food sales establishment" means retail and wholesale grocery stores; retail seafood stores and places of business; food processing plants, except those food processing plants which are currently required to obtain a license from the Commissioner under any other provision of law; bakeries; confectioneries; fruit, nuts, and vegetable stores or roadside stands; wholesale sandwich and salad manufacturers, including vending machines and operations connected therewith; and places of business and similar establishments, mobile or permanent, engaged in the sale of food primarily for consumption off the premises. Within a food sales establishment, there may be a food service component, not separately operated, which may serve customers on site. This food service component shall be considered as part of the food sales establishment. The food sales component of any food service establishment defined in Code Section 26-2-370 shall not be included in this definition. This term shall not include "food service establishments" as defined in Code Section 26-2-370. This term also shall not include establishments engaged in the sale of food primarily for consumption off the premises if such sale is an authorized part of and occurs upon the site of a fair or festival which:

(A) Is sponsored by a political subdivision of this state or by an organization exempt from taxes under paragraph (1) of subsection (a) of Code Section 48-7-25 or under Section 501(d) or paragraphs (1) through (8) or paragraph (10) of Section 501(c) of the Internal Revenue Code, as that code is defined in Code Section 48-1-2;

(B) Lasts 120 hours or less; and

(C) When sponsored by such an organization, is authorized to be conducted pursuant to a permit issued by the municipality or county in which it is conducted.

This term also shall not include establishments engaged in the boiling, bottling, and sale of sugar cane syrup or sorghum syrup within this state, provided that such bottles contain a label listing the producer's name and street address, all added ingredients, and the net weight or volume of the product.

(6) "Immediate container" does not include package liners.

(7) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under the authority of this article that any word, statement, or other information appear on the label shall not be considered to be complied with unless each such word, statement, or other information also appears on the outside wrapper or container, if there is any, of the retail package of such article, or is easily legible through the outside container or wrapper.

(8) "Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers or accompanying such article.

(9) "Official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(10) "Person" means an individual, partnership, corporation, or association or any combination thereof.

(b) The provisions of this article regarding the selling of food shall be considered to include the manufacture, production, packaging, offer, exposure, possession, and holding of any such articles and the supplying or applying of any such articles in the conduct of any food establishment. (Ga. L. 1956, p. 195, § 2; Ga. L. 1971, p. 66, § 1; Ga. L. 1992, p. 1174, § 1; Ga. L. 1998, p. 1220, § 1; Ga. L. 2000, p. 1558, § 1; Ga. L. 2012, p. 1072, § 1/SB 300.)

The 2012 amendment, effective July 1, 2012, in paragraph (a)(5), added the undesignated language following subparagraph (a)(5)(C).

26-2-22. Prohibited acts.

The following acts and the causing thereof within this state are prohibited:

(1) The manufacture, sale or delivery, holding, storage, or offering for sale of any food that is adulterated or misbranded;

(2) The adulteration or misbranding of any food;

(3) The receipt in commerce of any food that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of Code Section 26-2-37;

(5) The dissemination of any false advertisement;

(5.1) The failure to comply with testing, reporting, or record-keeping requirements provided by or pursuant to Code Section 26-2-27.1;

(6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by Code Section 26-2-36;

(7) The giving of a guaranty or undertaking, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the State of Georgia from whom he received in good faith the food;

(8) The removal or disposal of a detained or embargoed article in violation of Code Section 26-2-38;

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, if such act is done while such article is held for sale and results in such article being adulterated or misbranded;

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated pursuant to this article; and

(11) The operation of a food sales establishment in violation of Code Section 26-2-25. (Ga. L. 1956, p. 195, § 3; Ga. L. 1971, p. 66, § 2; Ga. L. 1984, p. 22, § 26; Ga. L. 1985, p. 149, § 26; Ga. L. 2009, p. 441, § 1/SB 80.)

The 2009 amendment, effective May 1, 2009, added paragraph (5.1).

26-2-25. Licensing of food sales establishments; revocation; notice and hearing; transferability; posting of license; fees; rules and regulations.

(a) It shall be unlawful for any person to operate a food sales establishment without having first obtained a license from the Commissioner. No license issued under this article shall be suspended or revoked except for health and sanitation reasons or violations of this article and until the licensee to be affected shall be provided with reasonable notice thereof and an opportunity for hearing, as provided under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Licenses issued under this article shall be renewed annually and shall not be transferable with respect to persons or location. Each food sales establishment licensed pursuant to this Code section shall post such license on the premises in an open and conspicuous manner so as to be visible to the public. Neither the state nor any county, municipality, or consolidated government shall issue or renew any business or occupation license or permit for any food sales establishment until the establishment complies with the requirements of this article.

(b) The Commissioner shall charge the following fees for the licenses issued pursuant to subsection (a) of this Code section. The fee structure shall be based on the level of risk, procedural effort, and inspection time needed for each food sales establishment:

(1) Tier 5 ..... $300.00

(2) Tier 4 ..... 250.00

(3) Tier 3 ..... 200.00

(4) Tier 2 ..... 150.00

(5) Tier 1 ..... 100.00

(c) The Department of Agriculture shall establish rules and regulations by which to assign each food sales establishment to a proper tier and to collect the fees provided for in this Code section. (Ga. L. 1971, p. 66, § 3; Ga. L. 2002, p. 815, § 1; Ga. L. 2010, p. 9, § 1-57/HB 1055.)

The 2010 amendment, effective May 12, 2010, designated the existing provisions as subsection (a); in subsection (a), substituted "renewed annually" for "valid until suspended or revoked" in the middle of the third sentence and deleted the former fourth sentence which read: "There shall be no fee for such license."; and added subsections (b) and (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "establishment" was substituted for "establishments" at the end of the introductory language in subsection (b) and "regulations" was substituted for "regulation" in subsection (c).

26-2-27.1. Testing of specimens from food processing centers; consistency in standards; cost; retention of records from testing; exemption.

(a) As used in this Code section, the term "food processing plant" means a commercial operation that manufactures food for human consumption and does not provide food directly to a consumer from that location. Such term shall not include a commercial operation that produces raw agricultural commodities and whose end product remains a raw agricultural product.

(b)(1)(A) In order to protect the public health, safety, and welfare and ensure compliance with this article, the Commissioner shall by rule or regulation establish requirements for regular testing of samples or specimens of foods and ingredients by food processing plants for the presence of poisonous or deleterious substances or other contaminants rendering such foods or ingredients injurious to health. Such rules or regulations shall identify the specific classes or types of food processing plants, foods, ingredients, and poisonous or deleterious substances or other contaminants that shall be subject to such testing requirements and the frequency with which such tests shall be performed by food processing plants.

(B) The Commissioner shall also promulgate rules and regulations establishing minimum standards and requirements for a written food safety plan, such as a hazard analysis critical control point plan, that may be submitted by an operator of a food processing plant to document and describe the procedures used at such plant to prevent the presence of hazards such as poisonous or deleterious substances or other contaminants that would render finished foods or finished ingredients as manufactured at such plant injurious to health, including preventive controls, monitoring to ensure the effectiveness of such controls, and records of corrective actions, including actions taken in response to the presence of known hazards. If an operator of a food processing plant, in its discretion, submits to the department a written food safety plan for such plant and such plan conforms to rules and regulations promulgated for purposes of this subparagraph, then such food processing plant shall comply with the requirements of such written food safety plan, including, but not limited to, any test regimen provided by such plan, in lieu of complying with a test regimen established by rules or regulations promulgated by the Commissioner pursuant to subparagraph (A) of this paragraph.

(C)(i) The Commissioner shall impose a civil penalty for a violation of this subsection.

(ii) The department shall adopt rules and regulations establishing a schedule of civil penalties that shall be imposed under

this subsection. Civil penalties imposed pursuant to this subsection shall not exceed $5,000.00 for each violation; provided, however, that a food processing plant that knowingly fails to comply with the provisions of subparagraph (B) of this paragraph shall be punished by the imposition of a $7,500.00 civil penalty. In addition to such civil penalty, within 30 days of the determination by the Commissioner that such violation has occurred, such food processing plant shall submit to the Commissioner a written plan pursuant to subparagraph (B) of this paragraph.

(iii) For purposes of this subsection, each day a violation continues after the period established for compliance by the Commissioner shall be considered a separate violation.

(iv) When a civil penalty is imposed under this subsection, such penalty shall be subject to review in the manner prescribed by Article 1 of Chapter 13 of Title 50, known as the "Georgia Administrative Procedure Act."

(2) In addition to any regular tests required pursuant to paragraph (1) of this subsection, the Commissioner may order any food processing plant to have samples or specimens of its foods and ingredients tested for the presence of any poisonous or deleterious substances or other contaminants whenever in his or her determination there are reasonable grounds to suspect that such foods or ingredients may be injurious to health.

(c) Any food processing plant subject to any testing requirements pursuant to this Code section shall cause such required tests to be performed in accordance with testing standards and procedures established by rules and regulations of the Commissioner. Testing standards and procedures established by the Commissioner under this paragraph shall be consistent with standards presented in the federal Food and Drug Administration's Bacterial Analytical Manual and standards developed by the Association of Analytical Communities International, International Organization for Standardization, or another internationally recognized certification body.

(d) A food processing plant shall be responsible for the cost of any testing required pursuant to this Code section and may conduct such testing either internally or via a third party, provided that subsection (c) of this Code section applies in either case.

(e)(1) Whenever any person or firm that operates a food processing plant in this state obtains information from testing of samples or specimens of finished foods or finished food ingredients as manufactured at such food processing plant which, based on a confirmed positive test result, indicates the presence of a substance that would cause a manufactured food bearing or containing the same to be

adulterated within the meaning of paragraph (1) of Code Section 26-2-26, such person or firm shall report such test result to the department within 24 hours after obtaining such information.

(2) Any person who knowingly fails to make the report required by paragraph (1) of this subsection shall be guilty of a misdemeanor. The punishment provided for in this subsection shall be supplemental to any other applicable provisions of law.

(f) Records of the results of any tests required pursuant to this Code section shall be kept by a food processing plant and made available to the department for inspection for a period of not less than two years from the date the results were reported by the laboratory. Any person who knowingly violates this subsection shall be guilty of a misdemeanor. The punishment provided for in this subsection shall be supplemental to any other applicable provisions of law.

(g) This Code section shall not apply to any food processing plant operating under a federal grant of inspection from the United States Department of Agriculture Food Safety and Inspection Service.

(h) Any person who knowingly introduces into commerce finished foods or finished food ingredients as manufactured at a food processing plant knowing that it contains a substance that would cause a manufactured food bearing or containing the same to be adulterated within the meaning of paragraph (1) of Code Section 26-2-26 shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment for not less than one nor more than 20 years, a fine not to exceed $20,000.00, or both. The punishment provided for in this subsection shall be supplemental to any other applicable provisions of law. (Code 1981, § 26-2-27.1, enacted by Ga. L. 2009, p. 441, § 2/SB 80; Ga. L. 2010, p. 465, §§ 2, 3, 4/HB 883.)

Effective date. — This Code section became effective May 1, 2009.

The 2010 amendment, effective May 25, 2010, inserted commas in the last sentence of subparagraph (b)(1)(B); added subparagraph (b)(1)(C); designated the existing provisions of subsection (e) as paragraph (e)(1); added paragraph (e)(2); added the second and third sentences in subsection (f); and added subsection (h).

Editor's notes. — Ga. L. 2010, p. 465, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Sanitary Activity for Food-processing Enterprises (SAFE) Act.'"

26-2-36. Right of entry in food establishments and transport vehicles; examination of samples obtained.

(a) The Commissioner or his duly authorized agent shall have free access during all hours of operation and at all other reasonable hours to any factory, warehouse, or establishment in which food is manufactured, processed, packed, or held for introduction into commerce and

any vehicle being used to transport or hold such foods to commerce for the purposes:

(1) Of inspecting such factory, warehouse, establishment, or vehicle, any records of pathogen destruction, and any records of testing of samples or specimens of foods or ingredients for the presence of poisonous or deleterious substances or other contaminants and the results thereof as may be required pursuant to Code Section 26-2-27.1, to determine if any of the provisions of this article are being violated; and

(2) Of securing samples or specimens of any food, after paying or offering to pay for such sample.

(b) It shall be the duty of the Commissioner to make or cause to be made examinations of samples secured under subsection (a) of this Code section to determine whether or not this article is being violated. (Ga. L. 1956, p. 195, § 16; Ga. L. 2009, p. 441, § 3/SB 80.)

The 2009 amendment, effective May 1, 2009, in subsection (a), near the beginning, inserted "during all hours of operation" and inserted "other"; and, in paragraph (a)(1), inserted ", any records of pathogen destruction, and any records of testing of samples or specimens of foods or ingredients for the presence of poisonous or deleterious substances or other contaminants and the results thereof as may be required pursuant to Code Section 26-2-27.1," in the middle.

ARTICLE 3

MEAT INSPECTION

Part 1

General Provisions

26-2-62. Definitions.

As used in this article, the term:

(1) "Adulterated" shall apply to any carcass, part thereof, meat, or meat food product under one or more of the following circumstances:

(A) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but, in case the substance is not an added substance, such article shall not be considered adulterated under this subparagraph if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(B)(i) If it bears or contains, by reason of administration of any substance to the live animal or otherwise, any added poisonous or added deleterious substance, other than one which is a

pesticide chemical in or on a raw agricultural commodity, a food additive, or a color additive, which may, in the judgment of the Commissioner, make such article unfit for human food;

(ii) If it is in whole or in part a raw agricultural commodity which bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 of the Federal Food, Drug, and Cosmetic Act;

(iii) If it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;

(iv) If it bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug, and Cosmetic Act; or

(v) If an article which is not adulterated under division (ii), (iii), or (iv) of this subparagraph bears or contains any pesticide chemical, food additive, or color additive which is prohibited by regulations of the Commissioner in establishments at which inspection is maintained under Code Sections 26-2-100 through 26-2-115;

(C) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(D) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;

(E) If it is in whole or in part the product of an animal which has died otherwise than by slaughter;

(F) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(G) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act;

(H) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is; or

(I) If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing food for animals, such food being derived wholly or in part from carcasses or parts or products of the carcasses of cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines.

(3) "Capable of use as human food" shall apply to any carcass or part or product of a carcass of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the Commissioner to deter its use as human food, or unless it is naturally inedible by humans.

(4) "Commissioner" means the Commissioner of Agriculture of the State of Georgia or his delegate.

(5) "Federal Food, Drug, and Cosmetic Act" means the act so entitled and acts amendatory thereof or supplementary thereto.

(6) "Federal Meat Inspection Act" means the act so entitled as amended by the Wholesome Meat Act.

(7) "Firm" means any partnership, association, or other unincorporated business organization.

(8) "Intrastate commerce" means commerce within this state.

(9) "Label" means a display of written, printed, or graphic matter upon the immediate container, not including package liners, of any article.

(10) "Labeling" means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers or accompanying such article.

(11) "Meat broker" means any person, firm, or corporation engaged in the business of buying or selling, on commission, carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or otherwise negotiating purchases or sales of such articles other than for his or her own account or as an employee of another person, firm, or corporation.

(12) "Meat food product" means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, nontraditional livestock, rabbits, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion

or which historically have not been considered by consumers as products of the meat food industry and which are exempted from definition as a meat food product by the Commissioner under such conditions as the Commissioner may prescribe by regulation to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, nontraditional livestock, rabbits, and goats.

(13) "Misbranded" shall apply to any carcass, part thereof, meat, or meat food product under one or more of the following circumstances:

(A) If its labeling is false or misleading in any particular;

(B) If it is offered for sale under the name of another food;

(C) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;

(D) If its container is so made, formed, or filled as to be misleading;

(E) If in a package or other container, unless it bears a label showing: (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations may be permitted and exemptions as to small packages may be established by regulations promulgated by the Commissioner;

(F) If any word, statement, or other information required by or under authority of this article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(G) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Commissioner under Code Section 26-2-107, unless it conforms to such definition and standard and its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food;

(H) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Commissioner under Code Section 26-2-107 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(I) If it is not subject to the provisions of subparagraph (G), unless its label bears:

(i) The common or usual name of the food, if there is any; and

(ii) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and coloring without naming each, provided that, to the extent that compliance with the requirements of this division is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Commissioner;

(J) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner, after consultation with the secretary of agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

(K) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that, to the extent that compliance with the requirements of this subparagraph is impracticable, exemptions shall be established by regulations promulgated by the Commissioner; or

(L) If it fails to bear, directly thereon or on its container, as the Commissioner may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Commissioner may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(13.1) "Nontraditional livestock" means the species of Artiodactyla (even-toed ungulates) listed as antelope, bison, buffalo, catalo, elk, deer other than white-tailed deer, and water buffalo that are held and possessed legally under the wild animal provisions of Chapter 5 of Title 27.

(14) "Official certificate" means any certificate prescribed by regulations of the Commissioner for issuance by an inspector or other person performing official functions under this article.

(15) "Official device" means any device prescribed or authorized by the Commissioner for use in applying any official mark.

(16) "Official inspection legend" means any symbol prescribed by regulations of the Commissioner showing that an article was inspected and passed in accordance with this article.

(17) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Commissioner to identify the status of any article or animal under this article.

(18) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this article as under the Federal Food, Drug, and Cosmetic Act.

(19) "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

(20) "Renderer" means any person, firm, or corporation engaged in the business of rendering carcasses or parts or products of the carcasses of cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines, except rendering conducted under inspection under Code Sections 26-2-100 through 26-2-115.

(21) "Retail establishment" means any establishment which sells, offers for sale, or displays for sale to the public any meat or meat product, whether prepared or otherwise, including any establishment in which meat or meat products are sold for consumption off the premises thereof. (Ga. L. 1969, p. 1028, § 1; Ga. L. 1971, p. 56, § 1; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 12; Ga. L. 1996, p. 1219, § 1; Ga. L. 2008, p. 458, § 8/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine" near the end of paragraph (2), in the middle of paragraph (11), in the first and second sentences of paragraph (12), and near the middle of paragraph (20).

26-2-64. Application of article.

The requirements of this article shall apply to persons, firms, corporations, establishments, animals, and articles regulated under the Federal Meat Inspection Act, 21 U.S.C. Section 601, et seq., only to the extent provided for in said federal act. Consistent with said federal act, the Commissioner may exercise concurrent jurisdiction with the secretary of agriculture of the United States and may enforce this article and any regulations promulgated pursuant thereto without regard to licensing agency. (Ga. L. 1969, p. 1028, § 28; Ga. L. 2007, p. 620, § 1/HB 433.)

The 2007 amendment, effective July 1, 2007, in the first sentence, inserted "21 U.S.C. Section 601, et seq.,", substituted "said" for "Section 408 of the", and added a period at the end and added the second sentence.

Part 2

Enforcement of Article

26-2-84. Detention of carcasses, meat, and meat food products suspected of being adulterated or misbranded; removal of official marks.

Whenever any carcass, part of a carcass, meat, or meat food product of cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, nontraditional livestock, rabbit, goat, or equine is found by any authorized representative of the Commissioner upon any premises where it is held for purposes of, or during or after, distribution and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of Part 3 of this article or Title I of the Federal Meat Inspection Act or the Federal Food, Drug, and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under Code Section 26-2-86 or notification of any federal authorities having jurisdiction over such article or animal; and it shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the Commissioner that the article or animal is eligible to retain such marks. (Ga. L. 1969, p. 1028, § 22; Ga. L. 1974, p. 453, § 1; Ga. L. 1982, p. 3, § 26; Ga. L. 1995, p. 244, § 13; Ga. L. 1996, p. 1219, § 2; Ga. L. 2008, p. 458, § 9/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," twice near the beginning of the first sentence.

26-2-85. Seizure and condemnation of carcasses, meat, and meat food products; release bond; costs.

(a) Any carcass, part of a carcass, meat, or meat food product of cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or any dead, dying, disabled, or diseased cattle, sheep, swine, nontraditional livestock, rabbit, goat, or equine, that is being transported or is held for sale in this state after such transpor-

tation, and that is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this article, is capable of use as human food and is adulterated or misbranded, or in any other way is in violation of this article, shall be liable to be proceeded against and seized and condemned, at any time, on an action for condemnation to be brought by the Commissioner in the superior court of the county in which the article or animal is found.

(b) If the article or animal is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct. The proceeds, if sold, less the court costs and fees and storage and other proper expenses, shall be paid into the state treasury. The article or animals shall not be sold contrary to the provisions of this article or the Federal Meat Inspection Act or the Federal Food, Drug, and Cosmetic Act.

(c) Upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to this article or the laws of the United States, the court may direct that such article or animal be delivered to the owner thereof subject to such supervision by authorized representatives of the Commissioner as is necessary to ensure compliance with the applicable laws.

(d) When a decree of condemnation is entered against the article or animal and it is released under bond or destroyed, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article or animal.

(e) This Code section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this article or other laws but shall be cumulative to such other authority. (Ga. L. 1969, p. 1028, § 23; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 14; Ga. L. 1996, p. 1219, § 3; Ga. L. 2008, p. 458, § 10/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," and "ratite," following "swine," near the beginning of subsection (a).

Part 3

Inspection of Animals, Carcasses, Meat, and Meat Food Products; Adulteration and Misbranding

26-2-100. Duties of inspectors.

The Commissioner shall appoint, from time to time, inspectors to make examination and inspection of all cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, and other equines, the inspection of which is provided for, and of all carcasses and parts

thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products are prepared. Said inspectors shall refuse to stamp, mark, tag, or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment described in this chapter until the same shall have actually been inspected and found to be not adulterated. Said inspectors shall perform such other duties as are provided by this article and by the rules and regulations to be promulgated by the Commissioner. (Ga. L. 1969, p. 1028, § 13; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 15; Ga. L. 1996, p. 1219, § 4; Ga. L. 2008, p. 458, § 11/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," near the beginning of the first sentence.

26-2-100.1. Examinations and inspections of nontraditional livestock carcasses, meats, and meat food products.

All examinations and inspections of nontraditional livestock carcasses and parts thereof, of nontraditional livestock meats and meat food products thereof, of sanitary conditions of all establishments in which nontraditional livestock meat and meat food products are prepared, and any other examination or inspection of nontraditional livestock and products thereof under or pursuant to this article shall be conducted by and through a voluntary inspection program with all costs thereof paid by the establishment slaughtering the nontraditional livestock or preparing such meat or meat food product, at rates established by the Commissioner. (Code 1981, § 26-2-100.1, enacted by Ga. L. 1995, p. 244, § 16; Ga. L. 1996, p. 1219, § 5; Ga. L. 2008, p. 458, § 12/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratite or" and "ratites or" preceding "nontraditional livestock" throughout this Code section.

26-2-102. Inspection of animals prior to slaughter or preparation; examination and slaughtering of diseased animals; examination and inspection of method; right of Commissioner to deny or suspend inspections.

(a) For the purpose of preventing the use in commerce of meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this state in which slaughtering and prepara-

tion of meat and meat food products of such animals are conducted for commerce.

(b) All cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines; and, when so slaughtered, the carcasses of said cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations promulgated by the Commissioner.

(c) For the purpose of preventing the inhumane slaughtering of livestock, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this article. The Commissioner may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be suspended temporarily at a slaughtering establishment if the Commissioner finds that any cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with paragraph (2) of Code Section 26-2-110 and Code Section 26-2-110.1 until the establishment furnishes assurances satisfactory to the Commissioner that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method. (Ga. L. 1969, p. 1028, § 3; Ga. L. 1974, p. 453, § 1; Ga. L. 1981, p. 657, § 1; Ga. L. 1995, p. 244, § 17; Ga. L. 1996, p. 1219, § 6; Ga. L. 2008, p. 458, § 13/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," near the middle of subsection (a), three times in subsection (b), and in the first and second sentences of subsection (c).

26-2-103. Post-mortem inspection and marking of carcasses and parts; disposition of condemned carcasses and parts; reinspection; removal of inspectors.

(a) The Commissioner shall cause to be made, by inspectors appointed for that purpose, a post-mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this state in which such articles are prepared for commerce.

(b) The carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and Condemned," all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be made unfit for human consumption by such establishment in the presence of an inspector; and the Commissioner may remove inspectors from any establishment which fails so to destroy any such condemned carcass or part thereof.

(c) Inspectors, after the first inspection, shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated. If any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be made unfit for human consumption by such establishment in the presence of an inspector. The Commissioner may remove inspectors from any establishment which fails to destroy any such condemned carcass or part thereof. (Ga. L. 1969, p. 1028, § 4; Ga. L. 1974, p. 453, § 1; Ga. L. 1982, p. 3, § 26; Ga. L. 1995, p. 244, § 18; Ga. L. 1996, p. 1219, § 7; Ga. L. 2008, p. 458, § 14/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," near the middle of subsection (a).

26-2-104. Inspection of carcasses, parts, meat, and meat products brought into or returned to slaughtering or packing establishments; limitations on entry of carcasses, parts, meat, and meat products.

(a) Code Sections 26-2-102 and 26-2-103 shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, and other equines, or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment where inspection under this part is maintained; and such examination and inspection shall be had before the carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products.

(b) Code Sections 26-2-102 and 26-2-103 shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained.

(c) The Commissioner may limit the entry of carcasses, parts of carcasses, meat, and meat food products, and other materials into any

establishment at which inspection under this part is maintained, under such conditions as he may prescribe, to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this article. (Ga. L. 1969, p. 1028, § 5; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 19; Ga. L. 1996, p. 1219, § 8; Ga. L. 2008, p. 458, § 15/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," near the beginning of subsection (a).

26-2-108. Sanitary inspections of slaughter and packing establishments; sanitation regulations; labeling adulterated meat and meat food products.

The Commissioner shall cause to be made, by experts in sanitation or by other competent inspectors, such inspection as may be necessary to inform himself or herself about the sanitary conditions of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for commerce. The Commissioner shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and, where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner shall refuse to allow the meat or meat food products to be labeled, marked, stamped, or tagged as "Inspected and Passed." (Ga. L. 1969, p. 1028, § 8; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 20; Ga. L. 1996, p. 1219, § 9; Ga. L. 2008, p. 458, § 16/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," near the middle of the first sentence.

26-2-109. Inspection of animals and food products thereof slaughtered and prepared at nighttime.

The Commissioner shall cause an examination and inspection of all cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, and other equines, and the food products thereof, slaughtered and prepared in the establishments described in this part. Such inspection shall be made during the nighttime as well as during the daytime, when the slaughtering of said cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, and other equines or the preparation of said food products is conducted during the nighttime. (Ga. L. 1969, p. 1028, § 9; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 21; Ga. L. 1996, p. 1219, § 10; Ga. L. 2008, p. 458, § 17/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," in both the first and second sentences of this Code section.

26-2-110. Slaughter, preparation, sale, or transportation of animals, meat, or meat food products generally.

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or any carcasses, parts of carcasses, meat, or meat food products of any such animals:

(1) Slaughter any such animals or prepare any such articles which are capable of use as human food, at any establishment preparing such articles for commerce except in compliance with this article;

(2) Slaughter or handle in connection with such slaughter any such animals in any manner not declared to be humane under Code Section 26-2-110.1;

(3) Sell, transport, offer for sale or transportation, or receive for transportation, in commerce:

(A) Any such articles which:

(i) Are capable of use as human food; and

(ii) Are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or

(B) Any articles required to be inspected under this part unless they have been so inspected and passed; or

(4) With respect to any such articles which are capable of use as human food, do any act while they are being transported in commerce or held for sale after such transportation which is intended to cause or has the effect of causing such articles to be adulterated or misbranded. (Ga. L. 1969, p. 1028, § 10; Ga. L. 1974, p. 453, § 1; Ga. L. 1981, p. 657, § 2; Ga. L. 1995, p. 244, § 22; Ga. L. 1996, p. 1219, § 11; Ga. L. 2008, p. 458, § 18/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," in the introductory language.

26-2-110.1. Approved methods for handling and slaughtering of animals; designation by Commissioner of methods of handling and slaughtering.

(a) For purposes of this article, the following methods of slaughtering and handling are declared to be humane:

(1) In the case of cattle, calves, horses, mules, sheep, swine, nontraditional livestock, rabbits, and other livestock, all animals are to be rendered insensible to pain by a single blow or gunshot or by an electrical, chemical, or other means which is rapid and effective before being shackled, hoisted, thrown, cast, or cut; or

(2) By slaughtering and handling in connection with such slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(b) In addition to the methods prescribed in subsection (a) of this Code section, the Commissioner may designate as humane any methods of slaughtering and handling which have been so designated by the United States secretary of agriculture on or before April 7, 1981, pursuant to United States Code Section 7-1904. The Commissioner is further authorized to designate as humane other methods of slaughtering and handling which have been demonstrated by research, investigation, and experimentation to be humane with reference to the speed and scope of slaughtering operations and with reference to other existing methods and then current scientific knowledge. (Ga. L. 1981, p. 657, § 3; Ga. L. 1995, p. 244, § 23; Ga. L. 1996, p. 1219, § 12; Ga. L. 2008, p. 458, § 19/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," near the beginning of paragraph (a)(1).

26-2-112. Inspection exceptions; labeling and handling of custom slaughtered and prepared meat or meat food products.

(a) Except as provided in subsection (c) of this Code section, the provisions of this part requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat, and meat food products at establishments conducting such operations shall not apply to:

(1) The slaughtering by any person of animals of his or her own raising and the preparation by him or her and transportation in commerce of the carcasses, parts thereof, meat, and meat food products of such animals exclusively for use by him or her and members of his or her household and his or her nonpaying guests and employees;

(2) The custom slaughter by any person, firm, or corporation of cattle, sheep, swine, nontraditional livestock, rabbits, or goats delivered by the owner thereof for such slaughter and the preparation by

such slaughterer and transportation in commerce of the carcasses, parts thereof, meat, and meat food products of such animals exclusively for use in the household of such owner by the owner and members of his or her household and his or her nonpaying guests and employees; nor to the custom preparation by any person, firm, or corporation of carcasses, parts thereof, meat, or meat food products derived from the slaughter by any person of cattle, sheep, swine, nontraditional livestock, rabbits, or goats of his or her own raising, or from game animals, delivered by the owner thereof for such custom preparation and transportation in commerce of such custom prepared articles, exclusively for use in the household of such owner by him or her and members of his or her household and his or her nonpaying guests and employees, provided that, in cases where such person, firm, or corporation engages in such custom operations at an establishment at which inspection under this article is maintained, the Commissioner may exempt from such inspection at such establishment any animals slaughtered or any meat or meat food products otherwise prepared on such custom basis. Custom operations at any establishment shall be exempt from inspection requirements as provided by this Code section only if the establishment complies with regulations which the Commissioner is authorized to promulgate to assure that any carcasses, parts thereof, meat, or meat food products, wherever handled on a custom basis, or any containers or packages containing such articles are separated at all times from carcasses, parts thereof, meat, or meat food products prepared for sale; that all such articles prepared on a custom basis or any containers or packages containing such articles are plainly marked "Not for Sale" immediately after being prepared and kept so identified until delivered to the owner; and that the establishment conducting the custom operation is maintained and operated in a sanitary manner; or

(3) The slaughtering and processing of rabbits by any person who raises rabbits for slaughter and processing for sale at wholesale and retail in numbers not to exceed 2,500 rabbits per year.

(b) The provisions of this article requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat, and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments.

(c) The slaughter of animals and preparation of articles referred to in paragraph (2) of subsection (a) and in subsection (b) of this Code section shall be conducted in accordance with such sanitary conditions as the Commissioner may by regulations prescribe. Notwithstanding subsec-

tion (a) of this Code section, the Commissioner or his delegate is authorized to enter upon the premises of any establishment which is exempt from regular inspections under the provisions of subsection (a) of this Code section and inspect such establishment and any facilities, carcasses, parts thereof, meat, meat food products, containers, and packaging to determine whether such establishment qualifies for exemption from regular inspections and is otherwise in compliance with the laws of this state and the rules and regulations of the Commissioner adopted pursuant thereto.

(d) The adulteration and misbranding provisions of this part, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this Code section. (Ga. L. 1969, p. 1028, § 14; Ga. L. 1971, p. 57, § 1; Ga. L. 1974, p. 453, § 1; Ga. L. 1977, p. 849, §§ 1, 2; Ga. L. 1984, p. 22, § 26; Ga. L. 1989, p. 335, § 1; Ga. L. 1995, p. 244, § 24; Ga. L. 1996, p. 1219, § 13; Ga. L. 2008, p. 458, § 20/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," twice in the first sentence of paragraph (a)(2).

26-2-113. Storage and handling regulations for carcasses, meat, and meat food products.

The Commissioner may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting such articles whenever the Commissioner deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. (Ga. L. 1969, p. 1028, § 15; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 25; Ga. L. 1996, p. 1219, § 14; Ga. L. 2008, p. 458, § 21/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," near the beginning of this Code section.

Part 4

Meat Processors and Related Industries

26-2-130. Buying, selling, transporting, or receiving of dead, dying, disabled, or diseased animals.

No person, firm, or corporation engaged in the business of buying, selling, or transporting in commerce dead, dying, disabled, or diseased

animals, or any parts of the carcasses of any such animals, shall buy, sell, transport, offer for sale or transportation, or receive for transportation any dead, dying, disabled, or diseased cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or parts of the carcasses of any such animals, unless such transaction or transportation is made in accordance with such regulations as the Commissioner may promulgate, to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes. (Ga. L. 1969, p. 1028, § 19; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 26; Ga. L. 1996, p. 1219, § 15; Ga. L. 2008, p. 458, § 22/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," near the middle of this Code section.

26-2-131. Registration of dealers in dead, dying, diseased, or disabled animals.

No person, firm, or corporation shall engage in business as a meat broker, renderer, or animal food manufacturer or engage in business as a wholesaler of any carcasses, or parts or products of the carcasses, of any cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles, or engage in the business of buying, selling, or transporting in commerce any dead, dying, disabled, or diseased animals of the specified kinds, or parts of such carcasses of any such animals unless, when required by regulations of the Commissioner, he or she has registered with the Commissioner his or her name and the address of each place of business at which, and all trade names under which, he or she conducts such business. (Ga. L. 1969, p. 1028, § 18; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 27; Ga. L. 1996, p. 1219, § 16; Ga. L. 2008, p. 458, § 23/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," near the middle of this Code section.

26-2-132. Maintenance and inspection of records.

(a) The following classes of persons, firms, and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses; and all persons, firms, and corporations subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the Commissioner, afford such representative and any duly authorized representative of the secretary of agriculture of the United States accompanied by such representative of the Commissioner access to their places of business and opportunity

to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any persons, firms, or corporations that engage for commerce in the business of slaughtering any cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any such animals for use as human food or animal food;

(2) Any persons, firms, or corporations that engage in the business of buying or selling (as meat brokers, wholesalers, or otherwise) or transporting in commerce or storing in or for such commerce any carcasses, or parts or products of carcasses, of any such animals; and

(3) Any persons, firms, or corporations that engage in business as renderers or engage in the business of buying, selling, or transporting any dead, dying, disabled, or diseased cattle, sheep, swine, nontraditional livestock, rabbits, goats, horses, mules, or other equines, or parts of such carcasses.

(b) Any record required to be maintained by this Code section shall be maintained for such period of time as the Commissioner may by regulations prescribe. (Ga. L. 1969, p. 1028, § 17; Ga. L. 1974, p. 453, § 1; Ga. L. 1995, p. 244, § 28; Ga. L. 1996, p. 1219, § 17; Ga. L. 2008, p. 458, § 24/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratites," following "swine," in paragraphs (a)(1) and (a)(3).

ARTICLE 6

MEAT, POULTRY, AND DAIRY PROCESSING PLANTS

26-2-209. Permanent license for meat processing plants; revocation or suspension; notice and hearing.

To assure the protection of the consuming public, no person shall operate a meat processing plant in this state without having first obtained a permanent license from the Commissioner; provided, however, that any meat processing plant operating under a federal grant of inspection from the United States Department of Agriculture, Food Safety Inspection Service, shall be exempt from such license requirement. There shall be no fee for such license. The license shall be kept on file in each place of business. The license shall not be transferable. The Georgia Department of Agriculture may refuse to grant inspection, and any such license may be revoked or suspended by the Commissioner for

the violation of this article or rules and regulations or sanitary standards and specifications adopted pursuant to this article. The Commissioner shall notify the licensee of the reasons why he or she intends to revoke or suspend the license, and the licensee shall be entitled to a hearing before the Commissioner within ten days after receipt of such notice of intention to revoke or suspend. At such hearing the Commissioner shall consider the circumstances and shall give the licensee reasonable time to correct the conditions or circumstances that caused the notice of intention to revoke or suspend the license to be given. (Ga. L. 1956, p. 748, § 5; Ga. L. 2007, p. 620, § 2/HB 433.)

The 2007 amendment, effective July 1, 2007, near the beginning, deleted "or dairy", inserted "permanent", and substituted the proviso for ". The original license fee shall be $10.00 and the renewal fee shall be $10.00 per annum. The license shall be valid from January 1 to December 31 of the year in which it was issued or until revoked as provided in this article. Any"; added the second through fourth sentences; added "The Georgia Department of Agriculture may refuse to grant inspection, and any" at the beginning of the fifth sentence; and, in the middle of the next to the last sentence, inserted "or she" and inserted a comma.

26-2-210. Permanent license for poultry processing plants; filing at place of business; transferability; suspension or revocation; notice and hearing.

To assure the protection of the consuming public, no person shall operate a poultry processing plant in this state without having first obtained a permanent license from the Commissioner; provided, however, that any poultry processing plant operating under a federal grant of inspection from the United States Department of Agriculture, Food Safety Inspection Service, shall be exempt from such license requirement. There shall be no fee for such license. The license shall be kept on file in each place of business. The license shall not be transferable. The Georgia Department of Agriculture may refuse to grant inspection, and any such license may be revoked or suspended by the Commissioner for the violation of this article or rules and regulations or sanitary standards and specifications adopted pursuant to this article. The Commissioner shall notify the licensee of the reasons why he or she intends to revoke or suspend the license, and the licensee shall be entitled to a hearing before the Commissioner within ten days after receipt of such notice of intention to revoke or suspend. At such hearing the Commissioner shall consider the circumstances and shall give the licensee reasonable time to correct the conditions or circumstances that caused the notice of intention to revoke or suspend the license to be given. (Ga. L. 1970, p. 186, § 1; Ga. L. 2007, p. 620, § 3/HB 433.)

The 2007 amendment, effective July 1, 2007, inserted "permanent" near the beginning, substituted the proviso for ". The fee for such license shall be fixed by the Commissioner in an amount not to exceed $10.00."; added the second sen-

tence; substituted "kept on file" for "conspicuously displayed" in the third sentence; substituted "The Georgia Department of Agriculture may refuse to grant inspection, and any" for "The license of any person who ceases operation for a period of 90 days or more shall automatically be revoked. Any"; in the next to the last sentence, inserted "or she" and inserted a comma; and deleted the former last sentence which read: "All licensees who operate a poultry processing plant in this state which is not covered under the provisions of the United States Department of Agriculture poultry inspection program shall register with the Commissioner on or before January 1 of each year at no cost to the licensee."

26-2-213.1. Applicability to individuals and entities governed by federal acts.

The requirements of this article shall apply to persons, firms, corporations, establishments, animals, and articles regulated under the federal Meat Inspection Act, 21 U.S.C. Section 601, et seq., or the federal Poultry Products Inspection Act, 21 U.S.C. Section 451, et seq., only to the extent provided for in said federal acts. Consistent with said federal acts, the Commissioner may exercise concurrent jurisdiction with the secretary of agriculture of the United States and may enforce this article and any regulations promulgated pursuant thereto without regard to licensing agency. (Code 1981, § 26-2-213.1, enacted by Ga. L. 2007, p. 620, § 4/HB 433.)

Effective date. — This Code section became effective July 1, 2007.

ARTICLE 7

MILK AND MILK PRODUCTS

26-2-232. Duties of Commissioner generally.

(a) The Commissioner is charged with the responsibility of enforcing this article.

(b) It shall be the duty of the Commissioner or his authorized representative:

(1) To inspect or cause to be inspected, as often as may be deemed practicable, all creameries, public dairies, condenseries, butter factories, cheese factories, ice cream factories, or any other places where dairy products are produced, manufactured, kept, handled, stored, or sold;

(2) To prohibit the production, sale, or distribution of unclean or unwholesome milk, cream, butter, cheese, ice cream, or other dairy products;

(3) To condemn for food purposes all unclean or unwholesome dairy products, wherever found;

(4) To take samples anywhere of any dairy product or imitation thereof and cause the same to be analyzed or satisfactorily tested;

(5) To weigh and test milk, cream, and other dairy products for the purpose of ascertaining the percentage and weight of butterfat or other ingredients contained therein; provided, however, that it shall not be necessary for the Commissioner to perform the tests if they are being performed by an agency of the federal government;

(6) To inspect and make tests of any instrument or equipment used in the testing or measuring of milk, cream, or other dairy products; and

(7) To compile and publish in print or electronically annually, or at such shorter intervals as he may desire, statistics and information concerning all phases of the dairy industry in this state. (Ga. L. 1929, p. 280, §§ 1, 19; Code 1933, §§ 42-503, 42-501; Ga. L. 1935, p. 167, § 2; Ga. L. 1961, p. 501, § 9; Ga. L. 1980, p. 981, § 3; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraph (b)(7).

26-2-234. Applications for licenses and permits; duration of licenses; renewal of licenses; procedure for denial, revocation, or suspension of licenses.

Application for all licenses and permits provided for in this article shall be made to the Commissioner on such forms as he or she may prescribe. All licenses shall be valid for a period of one year unless revoked or suspended as provided in this article. All licenses shall be renewable upon submission of all required application forms. The Commissioner may deny, refuse, suspend, or revoke any license, after notice and a hearing, for any violation of or failure to comply with this article or the rules and regulations promulgated hereunder; provided, however, that the hearing shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1933, § 42-606, enacted by Ga. L. 1961, p. 501, § 11; Ga. L. 1972, p. 947, § 1; Ga. L. 1980, p. 981, § 6; Ga. L. 2007, p. 103, § 1/HB 112.)

The 2007 amendment, effective July 1, 2007, inserted "or she" in the first sentence and deleted "payment of the required fee and" following "shall be renewable upon" in the third sentence.

26-2-235. License requirements — Cream testers.

No person shall act as a cream tester unless he or she is licensed, and it shall be unlawful for any person to employ as a cream tester any

person who does not have a license to operate testing apparatus for milk and cream. The license shall be posted in a conspicuous place in plain view of all persons entering the room in which all testing is done. (Ga. L. 1929, p. 280, § 4; Code 1933, § 42-505; Ga. L. 1935, p. 167, § 2; Ga. L. 1980, p. 981, § 7; Ga. L. 2007, p. 103, § 2/HB 112.)

The 2007 amendment, effective July 1, 2007, inserted "or she" in the first sentence and deleted the former last sentence, which read: "The fee for the license shall be $5.00."

26-2-238. Standards and requirements generally.

The standards and requirements of the May, 2005, Amended Version of the Grade A Pasteurized Milk Ordinance Recommendations of the United States Public Health Service — Food and Drug Administration and supplements thereto, except as otherwise provided in this article, are expressly adopted as the standards and requirements for this state. Future changes in and supplements to said milk ordinance may be adopted by the Commissioner as a part of the standards and requirements for this state. (Ga. L. 1929, p. 280, § 8; Code 1933, § 42-509; Ga. L. 1980, p. 981, § 10; Ga. L. 1983, p. 737, § 2; Ga. L. 1999, p. 638, § 4; Ga. L. 2000, p. 1291, § 2; Ga. L. 2002, p. 815, § 3; Ga. L. 2003, p. 140, § 26; Ga. L. 2004, p. 457, § 1; Ga. L. 2006, p. 178, § 1/SB 441.)

The 2004 amendment, effective July 1, 2004, substituted "May, 2003" for "May, 2001" near the beginning of the first sentence.

The 2006 amendment, effective July 1, 2006, substituted "May, 2005" for "May, 2003" near the beginning of the first sentence.

26-2-249. Unlawful acts.

It shall be unlawful:

(1) To handle milk, cream, butter, ice cream, or other dairy products in unclean or unsanitary places or in an unsanitary manner;

(2) To keep, store, or prepare for market any milk, cream, or other dairy products in the same building or enclosure where any hide or fur or any cow, horse, nontraditional livestock, hog, or other livestock is kept;

(3) To handle or ship milk, cream, ice cream, or other dairy products in unclean or unsanitary vessels;

(4) To expose milk, cream, ice cream, or other dairy products to flies or to any contaminating influence likely to convey pathogenic or other injurious bacteria;

(5) For any common carrier, railway, or express company to neglect or fail to remove or ship from its depot, on the day of its arrival there

for shipment, any milk, cream, or other dairy products left at the depot for transportation;

(6) For any common carrier, railway, or express company to allow merchandise of a contaminating nature to be stored on or with dairy products;

(7) To use or possess any branded or registered cream can or milk can or ice cream container for any purpose other than the handling, storing, or shipping of milk, cream, or ice cream; provided, however, that no person other than the rightful owner thereof shall use or possess any can, bottle, or other receptacle if such receptacle shall be marked with the brand or trademark of the owner. Nothing in this paragraph shall prohibit the temporary possession by a business involved in the normal processing, distribution, or retail sale of dairy products of any can, bottle, or other receptacle which is marked with the brand or trademark of another person or entity prior to its return to the rightful owner in the normal course of business, or if purchased from the rightful owner;

(8) To sell or offer for sale ice cream from a container or a compartment of a cabinet or fountain which contains any article of food other than ice cream or dairy products;

(9) To sell or offer for sale milk, cream, butter, cheese, ice cream, or other dairy products that are not pure and fresh and handled with clean utensils;

(10) To sell or offer for sale milk or cream from diseased or unhealthy animals or which was handled by any person suffering from or coming in contact with persons affected with any contagious disease;

(11) To sell or offer for sale any milk or cream which shall have been exposed to contamination or into which shall have fallen any unsanitary articles or any foreign substance which would render the milk or cream or the product manufactured therefrom unfit for human consumption;

(12) To sell or offer for sale milk, cream, butter, cheese, ice cream, or other dairy products which do not comply with the standards and requirements of this article or the rules and regulations promulgated hereunder. (Ga. L. 1929, p. 280, § 7; Code 1933, § 42-508; Ga. L. 1935, p. 167, § 2; Ga. L. 1980, p. 981, § 16; Ga. L. 1995, p. 244, § 29; Ga. L. 1996, p. 1219, § 18; Ga. L. 2000, p. 1298, § 1; Ga. L. 2008, p. 458, § 25/SB 364.)

The 2008 amendment, effective May 12, 2008, deleted "ratite," following "horse," in paragraph (2).

ARTICLE 9

GRAINS AND BREAD

26-2-290. Definitions.

Cross references. — Grits as official prepared food, § 50-3-78.

ARTICLE 10

FISH AND OTHER SEAFOODS

26-2-312. Wholesale fish dealers' licenses.

(a) No person, firm, association of persons, or corporation shall be authorized or permitted to engage in the business of wholesale fish dealer in this state without first having paid to the Commissioner of Agriculture the annual license fees required in this Code section and having procured a license from the Commissioner authorizing such person to engage in the business of wholesale fish dealer. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1. The annual license fee applicable to and required of wholesale fish dealers shall be as follows:

(1) The annual license fee for each resident wholesale fish dealer shall be $60.00 for each place of business, fixed or movable; and

(2) The annual license fee for each nonresident or alien wholesale fish dealer shall be $60.00 for each place of business, fixed or movable, provided that the annual license fee for each nonresident or alien wholesale fish dealer who is a resident of a state which charges Georgia resident wholesale fish dealers a fee in excess of $60.00 shall be the same as the fee such state charges Georgia resident wholesale fish dealers for each place of business, fixed or movable. The Commissioner of Agriculture of the State of Georgia may enter into a reciprocal agreement with any other state to limit the fees such state charges a Georgia resident who operates as a wholesale fish dealer or its equivalent in such other state.

(b) Each truck or movable unit from which fish are sold at wholesale shall be deemed a place of business within the meaning of this article.

(c) A resident who produces the fish and other seafood he or she sells at retail or wholesale shall not be required to pay the license fee provided in paragraph (1) of subsection (a) of this Code section; nor shall any commercial fisherman licensed to catch fish or seafood by the state game and fish laws, rules, and regulations be required to pay the license fee provided for in this Code section. (Ga. L. 1937-38, Ex. Sess.,

p. 332, § 5; Ga. L. 1939, p. 316, § 1; Ga. L. 1945, p. 315, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 521, § 2; Ga. L. 1987, p. 908, § 1; Ga. L. 2002, p. 819, § 1; Ga. L. 2010, p. 9, § 1-58/HB 1055; Ga. L. 2011, p. 752, § 26/HB 142.)

The 2010 amendment, effective May 12, 2010, in subsection (a), added the second sentence in the introductory paragraph and substituted "$60.00" for "$50.00" in paragraph (a)(1) and twice in paragraph (a)(2).

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, added "and" at the end of paragraph (a)(1).

26-2-319. Allocation of license fees.

Reserved. Repealed by Ga. L. 2010, p. 9, § 1-58.1/HB 1055, effective May 12, 2010.

Editor's notes. — This Code section was based on Ga. L. 1937-38, Ex. Sess., p. 332, § 11.

ARTICLE 11

KOSHER FOODS

26-2-330 through 26-2-335.

Reserved. Repealed by Ga. L. 2010, p. 114, § 2/HB 1345, effective May 20, 2010.

Editor's notes. — This article was based on Ga. L. 1980, p. 1767, § 1.

Ga. L. 2010, p. 114, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Kosher Food Consumer Protection Act.'"

ARTICLE 12

SOFT DRINKS

Law reviews. — For note, "Beer, Liquor, or a Little Bit of Both? Getting to the Bottom of Properly Classifying Flavored Malt Beverages in the United States and Australia," see 39 Ga. J. Int'l & Comp. L. 471 (2011).

26-2-351. License for manufacture and bottling; separate license for each business or bottling or manufacturing plant.

(a) In addition to complying with the food laws of this state, no person shall manufacture or bottle any soft drink or soft drink syrup within this state unless he or she has a current food sales establishment license from the Commissioner.

(b) Each place of business or bottling or manufacturing plant shall be required to obtain a separate license. (Ga. L. 1956, p. 611, § 2; Ga. L. 2007, p. 103, § 3/HB 112.)

The 2007 amendment, effective July 1, 2007, in subsection (a), substituted "manufacture or bottle any soft drink" for "manufacture, bottle, or distribute for resale any bottled soft drink", near the beginning, substituted "he or she has a current food sales establishment license" for "he has a current license" near the end, and deleted the former last three sentences which read: "The license fee shall be $10.00. Licenses shall expire on December 31 of each year and shall be renewable upon payment of a renewal fee of $10.00 per annum or part thereof. The Commissioner shall determine the form of the license."

ARTICLE 13

FOOD SERVICE ESTABLISHMENTS

26-2-370. Definitions.

As used in this article, the term:

(1) "Food nutrition information" means the content of food including, but not limited to, the caloric, fat, carbohydrate, cholesterol, fiber, sugar, potassium, protein, vitamin, mineral, and sodium content.

(2) "Food service establishment" means establishments for the preparation and serving of meals, lunches, short orders, sandwiches, frozen desserts, or other edible products either for carry out or service within the establishment. The term includes restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; taverns; lunchrooms; places which retail sandwiches or salads; soda fountains; institutions, both public and private; food carts; itinerant restaurants; industrial cafeterias; catering establishments; and similar facilities by whatever name called. Within a food service establishment, there may be a food sales component, not separately operated. This food sales component shall be considered as part of the food service establishment. This term shall not include a "food sales establishment," as defined in Code Section 26-2-21, except as stated in this definition. The food service component of any food sales establishment defined in Code Section 26-2-21 shall not be included in this definition. This term shall not include any outdoor recreation activity sponsored by the state, a county, a municipality, or any department or entity thereof, any outdoor or indoor (other than school cafeteria food service) public school function, or any outdoor private school function. This term also shall not mean establishments for the preparation and serving of meals, lunches, short orders, sandwiches, frozen desserts, or other edible products if such preparation or serving is an authorized part of and occurs upon the site of a fair or festival which:

(A) Is sponsored by a political subdivision of this state or by an organization exempt from taxes under paragraph (1) of subsection (a) of Code Section 48-7-25 or under Section 501(d) or paragraphs (1) through (8) or paragraph (10) of Section 501(c) of the Internal Revenue Code, as that code is defined in Code Section 48-1-2;

(B) Lasts 120 hours or less; and

(C) When sponsored by such an organization, is authorized to be conducted pursuant to a permit issued by the municipality or county in which it is conducted.

(3) "Person" or "persons" means any individual, firm, partnership, corporation, trustee, or association, or combination thereof. (Ga. L. 1958, p. 371, § 1; Code 1933, § 88-1001, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 660, § 1; Ga. L. 1992, p. 1174, § 2; Ga. L. 1998, p. 1220, § 2; Ga. L. 2000, p. 1558, § 3; Ga. L. 2001, p. 1216, § 1; Ga. L. 2008, p. 361, § 1/HB 1303; Ga. L. 2011, p. 308, § 4/HB 457.)

The 2008 amendment, effective July 1, 2008, added paragraph (1), and redesignated former paragraphs (1) and (2) as present paragraphs (2) and (3), respectively.

The 2011 amendment, effective May 11, 2011, inserted "or indoor (other than school cafeteria food service)" in the next-to-last sentence of paragraph (2).

26-2-371. Permits — Required; issued by county board of health or Department of Public Health; validity; transferability; rules and regulations by municipalities.

It shall be unlawful for any person to operate a food service establishment without having first obtained a valid food service establishment permit. Such permits shall be issued by the county board of health or its duly authorized representative, subject to supervision and direction by the Department of Public Health; but, where the county board of health is not functioning, such permit shall be issued by the Department of Public Health. Such permits shall be valid until suspended or revoked and shall not be transferable with respect to person or location. Nothing contained in this article shall prevent any municipality from adopting rules and regulations governing the licensing and operation of food service establishments. (Ga. L. 1958, p. 371, § 2; Code 1933, § 88-1002, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" twice in the second sentence of this Code section.

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" twice in the second sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

26-2-372. Permits — Issuance; suspension, revocation, or denial; notice and hearing.

The Department of Public Health, or county boards of health acting as agents of the department, shall have the power and authority to issue permits to operate food service establishments and to suspend or revoke such permits in accordance with the rules and regulations adopted and promulgated as provided for in this article. When, in the judgment of the department or the county board of health, acting as agent of the former, it is necessary and proper that such application for a permit be denied or that the permit previously granted be suspended or revoked, the applicant or holder thereof shall be afforded notice and hearing as provided in Article 1 of Chapter 5 of Title 31. In the event that such application is finally denied, suspended, or revoked, the applicant or holder of the permit shall be notified in writing. Such written notice shall specifically state any and all reasons why the application has been denied or the permit has been suspended or revoked. (Ga. L. 1958, p. 371, § 3; Code 1933, § 88-1003, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in the first sentence of this Code section.

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

26-2-373. Promulgation of rules, regulations, and standards by Department of Public Health and county boards of health; exemption for nonprofit schools and institutions producing own milk.

(a) For the purpose of protecting the public health, the Department of Public Health shall have the power to adopt and promulgate such rules and regulations as it deems necessary and proper to carry out the purpose and intent of this article, including the establishment of reasonable standards of sanitation for food service establishments and such establishments which are also retail frozen dessert packagers and the examination and condemnation of unwholesome food therein. County boards of health are authorized to adopt and promulgate supplementary rules and regulations, including the establishment of reasonable standards of sanitation for food service establishments,

consistent with those adopted and promulgated by the department; provided, however, that no county board of health or political subdivision of this state shall enact any ordinance or issue any rules and regulations pertaining to the provision of food nutrition information at food service establishments. As used in this subsection, the term "political subdivision" means any municipality, county, local government authority, board, or commission; however, such term shall not include any state agency or state authority. The department and the county boards of health may obtain technical and laboratory assistance from the Department of Agriculture.

(b) Nonprofit schools and institutions serving family-style meals shall not be included under the present law or any future law or any rule or regulation promulgated pursuant to such laws regulating the dispensing of milk in the kitchens and dining halls of such schools and institutions, provided such school or institution produces the milk on the school's or institution's farm which passes Department of Public Health and local health department sanitary requirements. (Ga. L. 1958, p. 371, § 4; Code 1933, § 88-1004, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1992, p. 1279, § 2; Ga. L. 2008, p. 361, § 2/HB 1303; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2008 amendment, effective July 1, 2008, in subsection (a), added the proviso at the end of the second sentence, and added the third sentence.

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in the first sentence of subsection (a) and near the end of subsection (b).

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of subsection (a), and near the end of subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

26-2-374. Contents and posting of notices relating to assistance to persons choking; relief from civil liability of persons rendering emergency aid.

(a) The Department of Public Health shall print and distribute notices to every food service establishment in this state explaining the proper procedures to be taken to assist or aid persons who are choking. The notices shall contain such information as is found appropriate or necessary by the department and shall be posted and maintained by the food service establishment in a conspicuous place or places on the premises as required by the department.

(b) Any person who renders emergency aid in good faith to persons who are choking, without any charge for his services, shall not be liable for any civil damages for any act or omission in rendering such emergency aid or as a result of any act or failure to act to provide or

arrange for further treatment or care for such persons. (Code 1933, § 88-1004.1, enacted by Ga. L. 1979, p. 1272, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in the first sentence of subsection (a).

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

26-2-375. Enforcement of article; inspection of food service and food sales establishments.

(a) The Department of Public Health and the county boards of health, acting as duly authorized agents of the department, are authorized to enforce this article and rules, regulations, and standards adopted and promulgated under this article in establishments that have the majority of square footage of building floor space, including indoor and outdoor dining areas, used for the operation of food service as defined in Code Section 26-2-370. Their duly authorized representatives are authorized to enter upon and inspect the premises of any food service establishment as provided in Article 2 of Chapter 5 of Title 31.

(b) Notwithstanding any other provisions of this article, food sales establishments as defined in Code Section 26-2-21 shall be inspected and regulated under Article 2 of this chapter and shall not be subject to inspection or enforcement under this article. (Ga. L. 1958, p. 371, § 7; Code 1933, § 88-1006, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 660, § 2; Ga. L. 2000, p. 1558, § 4; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in the first sentence of subsection (a).

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

26-2-376. Review of final order or determination by Department of Public Health; appeal to superior court.

Any person aggrieved by any final order or determination of any county board of health denying, suspending, or revoking any permit authorized in this article may secure review thereof by the Department of Public Health by appeal in the manner prescribed in Article 1 of Chapter 5 of Title 31. Any person aggrieved by any final order or

determination made by the Department of Public Health, whether originally or on appeal, may secure review thereof by appeal to the superior court in the manner prescribed in Article 1 of Chapter 5 of Title 31. (Ga. L. 1958, p. 371, § 8; Code 1933, § 88-1007, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" twice in this Code section.

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" twice in this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

26-2-377. Penalty for violation of article.

Any person who violates any provision of this article or any rule or regulation promulgated under this article by the Department of Public Health or by any county board of health shall be guilty of a misdemeanor. (Ga. L. 1958, p. 371, § 11; Code 1933, § 88-1008, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in this Code section.

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

ARTICLE 14

NONPROFIT FOOD SALES AND FOOD SERVICE

26-2-393. Enforcement of article.

(a) The county or municipality issuing a permit for the operation of a nonprofit food sales and food service event shall be authorized to enforce the provisions of this article; provided, however, no adverse action against an organization may be taken by a county or municipality or any agent of a county or municipality, including a denial of a permit or revocation of a permit, or citation for violation of this article, without the written approval of such action by the district health director.

(b) Any organization which is aggrieved or adversely affected by any final order or action of a county board of health or district health director may have review thereof by appeal to the commissioner of public health or his or her designee. Appeals to the commissioner shall

be heard after not more than eight hours. (Code 1981, § 26-2-393, enacted by Ga. L. 1992, p. 1174, § 3; Ga. L. 1998, p. 1220, § 3; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "commissioner of community health" for "commissioner of human resources" in the first sentence of subsection (b).

The 2011 amendment, effective July 1, 2011, substituted "commissioner of public health" for "commissioner of community health" in the first sentence of subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

ARTICLE 15

SALE OF MEAT, POULTRY, OR SEAFOOD FROM MOBILE VEHICLES

26-2-410. Definitions.

As used in this article, the term:

(1) "Meat" means the carcass or any part of any carcass of any animal or any by-product thereof in any form.

(2) "Mobile vehicle" means any vehicle that is mobile and includes land vehicles, air vehicles, and water vehicles.

(3) "Poultry" means domestic fowl including, but not limited to, water fowl such as geese and ducks; birds which are bred for meat or egg production; game birds such as pheasants, partridge, quail, and grouse, as well as guinea fowl, pigeons, doves, and peafowl; ratites; and all other avian species.

(4) "Seafood" means all fresh or frozen fish and all fresh or frozen shellfish, such as shrimp, oysters, clams, scallops, lobsters, crayfish, and other similar fresh or frozen edible products, but such term shall not include canned or salted seafood. (Code 1981, § 26-2-410, enacted by Ga. L. 1998, p. 1377, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 2008, p. 458, § 26/SB 364.)

The 2008 amendment, effective May 12, 2008, in paragraph (1), deleted ", including ratites," following "any animal"; and, in paragraph (3), inserted "ratites;" near the end, and deleted the former second sentence, which read: "Such term shall not include ratites, which are considered to be livestock under the laws of this state."

26-2-411. Licensing and inspection of mobile vehicles.

(a) Any person who sells, displays for sale, or offers for sale at retail any fresh or frozen meat, poultry, or seafood in, on, or from a mobile vehicle shall prominently display in such mobile vehicle a current and

valid license issued by the Department of Agriculture. Such license shall be issued by the department following the satisfactory inspection of such mobile vehicle and the meat, poultry, or seafood offered for sale therefrom to determine compliance with the laws of this state and the rules and regulations of the Commissioner and the payment of a license fee of $100.00 per vehicle per year or any portion thereof. All licenses shall expire 12 months from the date of issue. Any license may be renewed for any subsequent year upon a satisfactory inspection of the mobile vehicle and its contents and the payment of the license fee. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b) As a condition for retaining a license issued pursuant to this article, a mobile vehicle shall be inspected by the department a minimum of once every six months and a stamp, seal, or other marking showing the date of such inspection shall be affixed to the license by the department or its inspector. There shall be no charge or fee for such semi-annual inspection stamp, seal, or other marking. It shall be the duty of the owner or operator of each mobile vehicle licensed or required to be licensed under this article to make such mobile vehicle available to the department for inspection a minimum of once every six months at a reasonable time and place specified by the department. Said place shall be within 100 miles of the county in which the license is issued. (Code 1981, § 26-2-411, enacted by Ga. L. 1998, p. 1377, § 1; Ga. L. 2010, p. 9, § 1-59/HB 1055.)

The 2010 amendment, effective May 12, 2010, in subsection (a), substituted "$100.00" for "$50.00" in the second sentence and added the last sentence.

ARTICLE 16

COMMON-SENSE CONSUMPTION

Effective date. — This article became effective July 1, 2004.

26-2-430. Short title.

This article shall be known and may be cited as the "Common-sense Consumption Act." (Code 1981, § 26-2-430, enacted by Ga. L. 2004, p. 767, § 1; Ga. L. 2005, p. 469, § 1/HB 196.)

Editor's notes. — Ga. L. 2005, p. 469, § 1, effective July 1, 2005, reenacted this Code section without change.

Law reviews. — For article on 2004 enactment of this article, see 21 Ga. St. U. L. Rev. 165 (2004).

26-2-431. Definitions.

As used in this article, the term:

(1) "Claim" means any claim by or on behalf of a natural person, as well as any derivative or other claim arising therefrom asserted by or on behalf of any other person.

(2) "Federal act" means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. Section 301, et seq., 52 Stat. Section 1040, et seq.).

(3) "Generally known condition allegedly caused by or allegedly likely to result from long-term consumption" means a condition generally known to result or likely to result from the cumulative effect of consumption and not from a single instance of consumption.

(4) "Knowing and willful" means that:

(A) The conduct constituting a violation of federal or state law was committed with the intent to deceive or injure consumers or with actual knowledge that such conduct was injurious to consumers; and

(B) The conduct constituting such violation was not required by regulations, orders, rules, or other pronouncement of, or any statute administered by, a federal, state, or local government agency.

(5) "Other person" means any individual, corporation, company, association, firm, partnership, society, joint-stock company, or other entity, including any governmental entity or private attorney general. (Code 1981, § 26-2-431, enacted by Ga. L. 2004, p. 767, § 1; Ga. L. 2005, p. 469, § 1/HB 196.)

The 2005 amendment, effective July 1, 2005, substituted "Generally known" for "Generally-known" in paragraph (3).

26-2-432. Exemption from liability of food distributors for long-term consumption of food.

Except as provided in Code Section 26-2-433, a manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of a food, as defined in Section 201(f) of the federal act, 21 U.S.C. Section 321(f), or an association of one or more such entities, shall not be subject to civil liability arising under any law of this state for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food. (Code 1981, § 26-2-432, enacted by Ga. L. 2004, p. 767, § 1; Ga. L. 2005, p. 469, § 1/HB 196.)

The 2005 amendment, effective July 1, 2005, inserted "21 U.S.C. Section 321(f)" following "Section 201(f) of the federal act," and substituted "generally known" for "generally-known".

26-2-433. Exception to nonliability of food distributors.

The limitation of liability provided for in Code Section 26-2-432 shall not preclude civil liability that might otherwise exist under the law of this state where the claimed injury does not arise out of weight gain, obesity, health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food but is instead based on other cognizable injuries arising from:

(1) A material violation of an adulteration or misbranding requirement prescribed by statute or regulation of this state or of the United States and the claimed injury was proximately caused by such violation; or

(2) Any other material violation of federal or state statutes or regulations applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that such violation is knowing and willful, the claim is brought by a party authorized to bring suit under such law, and the claimed injury was proximately caused by such violation. (Code 1981, § 26-2-433, enacted by Ga. L. 2004, p. 767, § 1; Ga. L. 2005, p. 469, § 1/HB 196.)

The 2005 amendment, effective July 1, 2005, in the introductory language, inserted "that might otherwise exist under the law of this state" following "civil liability", substituted "claimed injury does not arise out" for "claim", substituted "generally known" for "generally-known", substituted "but is instead" for "is" following "consumption of food", and added "other cognizable injuries arising from" at the end; and in paragraph (2), substituted "statutes or regulations" for "law" and inserted ", the claim is brought by a party authorized to bring suit under such law," following "knowing and willful".

26-2-434. Requirements of complaint.

(a) In any action exempted under paragraph (1) of Code Section 26-2-433, the complaint initiating such action shall state with particularity the following:

(1) The statute, regulation, or other law of this state or of the United States that was allegedly violated;

(2) The facts that are alleged to constitute a material violation of such statute, regulation, or other law; and

(3) The facts alleged to demonstrate that such violation proximately caused actual injury to the plaintiff.

(b) In any action exempted under paragraph (2) of Code Section 26-2-433, in addition to the requirements of subsection (a) of this Code section, the complaint initiating such action shall state with particularity facts sufficient to support a reasonable inference that the violation was with intent to deceive or injure consumers or with the actual knowledge that such violation was injurious to consumers.

(c) For purposes of applying this article, the requirements of this Code section are hereby deemed part of the substantive law of this state and not merely in the nature of procedural provisions. (Code 1981, § 26-2-434, enacted by Ga. L. 2004, p. 767, § 1; Ga. L. 2005, p. 469, § 1/HB 196.)

The 2005 amendment, effective July 1, 2005, substituted "with intent to deceive or injure consumers or with the actual knowledge that such violation was injurious to consumers" for "knowing and willful" near the end of subsection (b); redesignated the former last sentence of subsection (b) as present subsection (c); and in subsection (c), inserted "applying" following "For purposes" and deleted "subsection (a)" following "the requirements".

26-2-435. Discovery.

In any action exempted under Code Section 26-2-433, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. During the pendency of any stay of discovery pursuant to this Code section, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of such party and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under Title 9. (Code 1981, § 26-2-435, enacted by Ga. L. 2004, p. 767, § 1; Ga. L. 2005, p. 469, § 1/HB 196.)

The 2005 amendment, effective July 1, 2005, substituted "stay of discovery" for "state of discovery" in the second sentence.

26-2-436. Applicability.

The provisions of this article shall apply to all covered claims pending on July 1, 2005, and all claims filed thereafter, regardless of when the claim arose. (Code 1981, § 26-2-436, enacted by Ga. L. 2004, p. 767, § 1; Ga. L. 2005, p. 469, § 1/HB 196.)

The 2005 amendment, effective July 1, 2005, substituted "the effective date of this Code section" for "July 1, 2004,".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "July 1, 2005," was substituted for "the effective date of this Code section" in this Code section.

CHAPTER 3

STANDARDS, LABELING, AND ADULTERATION OF DRUGS AND COSMETICS

26-3-8. When a drug or device deemed misbranded.

Law reviews. — For note, "Does the National Childhood Vaccine Injury Compensation Act Really Prohibit Design Defect Claims?: Examining Federal Preemption in Light of American Home Products Corp. v. Ferrari," see 26 Ga. St. U. L. Rev. 617 (2010).

26-3-18. Assistance in enforcement from Department of Agriculture or Department of Public Health.

In addition to the remedies provided in this chapter and to provide for more efficient enforcement of this chapter, the State Board of Pharmacy or the director of the Georgia Drugs and Narcotics Agency may ask the Department of Agriculture and the Department of Public Health for assistance; and, in such event, either or both such departments may render such assistance. Any employee or agent of either such department engaged in the rendering of such assistance shall be an authorized agent of the board. (Ga. L. 1961, p. 529, § 16A; Code 1933, § 79A-1016, enacted by Ga. L. 1967, p. 296, § 1; Ga. L. 1977, p. 625, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in the first sentence of this Code section.

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

CHAPTER 4

PHARMACISTS AND PHARMACIES

Article 1

General Provisions

Article 2

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Article 3

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Article 4

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Prescription Drugs

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Nuclear Pharmacy Law

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Injuries from Drugs, 7 POF3d 1.

Am. Jur. Trials. — Drug Products Liability and Malpractice Cases, 17 Am. Jur. Trials 1.

Pharmacist Liability, 32 Am. Jur. Trials 375.

Pharmacist Malpractice: Trial and Litigation Strategy, 78 Am. Jur. Trials 407.

ARTICLE 1

GENERAL PROVISIONS

26-4-1. Short title.

JUDICIAL DECISIONS

Cited in Carolina Cas. Ins. Co. v. R.L. Brown & Assocs., No. 1:04-cv-3537-GET, 2006 U.S. Dist. LEXIS 71056 (N.D. Ga. Sept. 29, 2006).

26-4-5. Definitions.

As used in this chapter, the term:

(1) "Administer" or "administration" means the provision of a unit dose of medication to an individual patient as a result of the order of an authorized practitioner of the healing arts.

(2) "Board of pharmacy" or "board" means the Georgia State Board of Pharmacy.

(3) "Brand name drug" means the proprietary, specialty, or trade name used by a drug manufacturer for a generic drug and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device as the result of a practitioner's prescription drug order or initiative based on the relationship between the practitioner, patient, and pharmacist in the course of professional practice or for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine and regularly observed prescribing patterns.

(5) "Confidential information" means information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of patient counseling which is privileged and may be released only to the patient or, as the patient directs, to those practitioners and other pharmacists where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; and to such other persons or governmental agencies authorized by law to receive such confidential information.

(6) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Code Sections 16-13-25 through 16-13-29, Schedules I through V of 21 C.F.R. Part 1308, or both.

(7) "Dangerous drug" means any drug, substance, medicine, or medication as defined in Code Section 16-13-71.

(8) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

(9) "Device" means an instrument, apparatus, contrivance, or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician."

(10) "Dispense" or "dispensing" means the preparation and delivery of a drug or device to a patient, patient's caregiver, or patient's agent pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(11) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(11.1) "Division director" means the division director of the professional licensing boards division, as provided in Chapter 1 of Title 43.

(12) "Drug" means:

(A) Articles recognized as drugs in any official compendium, or supplement thereto, designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(B) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(C) Articles, other than food, intended to affect the structure or any function of the body of humans or animals; and

(D) Articles intended for use as a component of any articles specified in subparagraph (A), (B), or (C) of this paragraph but does not include devices.

(13) "Drug regimen review" includes but is not limited to the following activities:

(A) Evaluation of any prescription drug order and patient record for:

(i) Known allergies;

(ii) Rational therapy-contraindications;

(iii) Reasonable dose and route of administration; and

(iv) Reasonable directions for use;

(B) Evaluation of any prescription drug order and patient record for duplication of therapy;

(C) Evaluation of any prescription drug order and patient record for the following interactions:

(i) Drug-drug;

(ii) Drug-food;

(iii) Drug-disease; and

(iv) Adverse drug reactions; and

(D) Evaluation of any prescription drug order and patient record for proper utilization, including overutilization or underutilization, and optimum therapeutic outcomes.

(14) "Drug researcher" means a person, firm, corporation, agency, department, or other entity which handles, possesses, or utilizes controlled substances or dangerous drugs, as defined in Chapter 13 of Title 16, for purposes of conducting research, drug analysis, animal training, or drug education, as such purposes may be further defined by the board, and is not otherwise registered as a pharmacist, pharmacy, drug wholesaler, distributor, supplier, or medical practitioner.

(14.1) "Electronic data prescription drug order" means any digitalized prescription drug order transmitted to a pharmacy, by a means other than by facsimile, which contains the secure, personalized digital key, code, number, or other identifier used to identify and authenticate the prescribing practitioner in a manner required by state laws and board regulations and includes all other information required by state laws and board regulations. "Electronic data prescription drug order" also includes any digitalized prescription drug order transmitted to a pharmacy that is converted into a visual image of a prescription order during the transmission process, is received by the pharmacy through a facsimile, and includes the practitioner's electronic signature.

(14.2) "Electronic data signature" means:

(A) A secure, personalized digital key, code, number, or other identifier used for secure electronic data transmissions which identifies and authenticates the prescribing practitioner as a part of an electronic data prescription drug order transmitted to a pharmacy; or

(B) An electronic symbol or process attached to or logically associated with a record and executed or adopted by a prescribing practitioner with the intent to sign an electronic data prescription drug order, which identifies the prescribing practitioner, as a part of an electronic data prescription drug order transmitted to a pharmacy.

(14.3) "Electronic signature" means an electronic visual image signature or an electronic data signature of a practitioner which appears on an electronic prescription drug order.

(14.4) "Electronic visual image prescription drug order" means any exact visual image of a prescription drug order issued by a practitioner electronically and which bears an electronic reproduction of the visual image of the practitioner's signature, is either printed on security paper and presented as a hard copy to the patient or transmitted by the practitioner via facsimile machine or equipment to a pharmacy, and contains all information required by state law and regulations of the board.

(14.5) "Electronic visual image signature" means any exact visual image of a practitioner's signature reproduced electronically on a hard copy prescription drug order presented to the patient by the practitioner or is a prescription drug order transmitted to a pharmacy by a practitioner via facsimile machine or equipment.

(15) "Emergency service provider" means licensed ambulance services, first responder services or neonatal services, or any combination thereof.

(16) "Extern" or "pharmacy extern" means an individual who is a student currently enrolled in an approved school or college of pharmacy and who has been assigned by the school or college of pharmacy to a licensed pharmacy for the purposes of obtaining practical experience and completing a degree in pharmacy. For the purposes of this chapter, a pharmacy extern may engage in any activity or perform any function which a pharmacy intern may perform under the direct supervision of a licensed pharmacist.

(17) "Federal act" or "Federal Food, Drug, and Cosmetic Act" means the Federal Food, Drug, and Cosmetic Act of the United States of America, approved June 25, 1938, officially cited as Public Document 717, 75th Congress (Chapter 675-3rd Sess.) and all amendments thereto, and all regulations promulgated thereunder by the commissioner of the Federal Food and Drug Administration.

(18) "Generic name" means a chemical name, a common or public name, or an official name used in an official compendium recognized by the Federal Food, Drug, and Cosmetic Act, as amended.

(18.05) "Hard copy prescription drug order" means a written, typed, reproduced, or printed prescription drug order prepared on a piece of paper.

(18.1) "Institution" means any licensed hospital, nursing home, assisted living community, personal care home, hospice, health clinic, or prison clinic.

(19) "Intern" or "pharmacy intern" means an individual who is:

(A) A student who is currently enrolled in an approved school or college of pharmacy, has registered with the board, and has been licensed as a pharmacy intern;

(B) A graduate of an approved school or college of pharmacy who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(C) An individual who does not otherwise meet the requirements of subparagraph (A) or (B) of this paragraph and who has estab-

lished educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate and is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist.

(20) Reserved.

(21) "Labeling" means the process of preparing and affixing a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal, state, or federal and state law or rule.

(22) "Manufacturer" means a person engaged in the manufacturing of drugs or devices.

(23) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of any substance or labeling or relabeling of its container and the promotion and marketing of such drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(23.5) "Narcotic treatment program clinic pharmacy" means a pharmacy which is attached to, located in, or otherwise a part of and operated by a narcotic treatment program which provides an opiate replacement treatment program, as designated or defined by the Department of Behavioral Health and Developmental Disabilities or such other state agency as may be designated as the state authority for the purposes of implementing the narcotic treatment program authorized by federal and state laws and regulations.

(24) "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(25) "Patient counseling" means the oral communication by the pharmacist of information, as defined in the rules of the board, to the patient, patient's caregiver, or patient's agent, in order to improve therapy by ensuring proper use of drugs and devices.

(26) "Person" means an individual, corporation, partnership, or association.

(27) "Pharmaceutically equivalent" means drug products that contain identical amounts of the identical active ingredient, in identical dosage forms, but not necessarily containing the same inactive ingredients.

(28) "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacy. This recognizes a pharmacist as a learned professional who is authorized to provide patient services and pharmacy care.

(29) "Pharmacist in charge" means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of such pharmacy and personnel.

(30) "Pharmacy" means:

(A) The profession, art, and science that deals with pharmacy care, drugs, or both, medicines, and medications, their nature, preparation, administration, dispensing, or effect; or

(B) Any place licensed in accordance with this chapter wherein the possessing, displaying, compounding, dispensing, or selling of drugs may be conducted, including any and all portions of the building or structure leased, used, or controlled by the licensee in the conduct of the business or profession licensed by the board at the address for which the license was issued.

(31) "Pharmacy care" means those services related to the interpretation, evaluation, or dispensing of prescription drug orders, the participation in drug and device selection, drug administration, and drug regimen reviews, and the provision of patient counseling related thereto.

(32) "Pharmacy technician" means those support persons utilized in pharmacies whose responsibilities are to provide nonjudgmental technical services concerned with the preparation for dispensing of drugs under the direct supervision and responsibility of a pharmacist.

(33) "Practitioner" or "practitioner of the healing arts" means a physician, dentist, podiatrist, or veterinarian and shall include any other person licensed under the laws of this state to use, mix, prepare, dispense, prescribe, and administer drugs in connection with medical treatment to the extent provided by the laws of this state.

(34) "Preceptor" means an individual who is currently licensed as a pharmacist by the board, meets the qualifications as a preceptor

under the rules of the board, and participates in the instructional training of pharmacy interns.

(35) "Prescription drug" or "legend drug" means a drug which, under federal law, is required, prior to being dispensed or delivered, to be labeled with either of the following statements: "Caution: federal law prohibits dispensing without prescription" or "Caution: federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or a drug which is required by any applicable federal or state law or rule to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only; or a controlled substance, as defined in paragraph (6) of this Code section or a dangerous drug as defined in paragraph (7) of this Code section.

(36) "Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient; such order includes an electronic visual image prescription drug order and an electronic data prescription drug order.

(37) "Prospective drug use review" means a review of the patient's drug therapy and prescription drug order, as defined in the rules of the board, prior to dispensing the drug as part of a drug regimen review.

(37.1) "Remote automated medication system" means an automated mechanical system that is located in a skilled nursing facility or hospice licensed as such pursuant to Chapter 7 of Title 31 that does not have an on-site pharmacy and in which medication may be dispensed in a manner that may be specific to a patient.

(37.2) "Remote order entry" means the entry made by a pharmacist located within the State of Georgia from a remote location indicating that the pharmacist has reviewed the patient specific drug order for a hospital patient, has approved or disapproved the administration of the drug for such patient, and has entered the information in the hospital's patient record system.

(38) "Reverse drug distributor" means a person, firm, or corporation which receives and handles drugs from within this state which are expired, discontinued, adulterated, or misbranded, under the provisions of Chapter 3 of this title, the "Georgia Drug and Cosmetic Act," from a pharmacy, drug distributor, or manufacturer for the purposes of destruction or other final disposition or for return to the original manufacturer of a drug.

(38.5) "Security paper" means a prescription pad or paper that has been approved by the board for use and contains the following characteristics:

(A) One or more industry recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(B) One or more industry recognized features designed to prevent the erasure or modification of information written on the prescription form by the practitioner; and

(C) One or more industry recognized features designed to prevent the use of counterfeit prescription forms.

Where security paper is in the form of a prescription pad, each pad shall bear an identifying lot number, and each piece of paper in the pad shall be numbered sequentially beginning with the number one.

(39) "Significant adverse drug reaction" means a drug related incident that may result in serious harm, injury, or death to the patient.

(40) "Substitution" means to dispense pharmaceutically equivalent and therapeutically equivalent drug products as regulated by the board in place of the drug prescribed.

(41) "Wholesale distributor" means any person engaged in wholesale distribution of drugs, including but not limited to manufacturers; repackagers; own label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and retail and hospital pharmacies that conduct wholesale distributions. (Code 1981, § 26-4-5, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 277, § 1.1; Ga. L. 2000, p. 1706, § 22; Ga. L. 2004, p. 738, §§ 2, 3; Ga. L. 2007, p. 47, § 26/SB 103; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2010, p. 266, § 1/SB 195; Ga. L. 2011, p. 227, § 7/SB 178; Ga. L. 2011, p. 308, § 5/HB 457; Ga. L. 2011, p. 659, § 3/SB 36; Ga. L. 2012, p. 1092, § 1A/SB 346.)

The 2004 amendment, effective July 1, 2004, added paragraphs (14.1) through (14.5), (18.05), and (38.5); and added "; such order includes an electronic visual image prescription drug order and an electronic data prescription drug order" at the end of paragraph (36).

The 2007 amendment, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

The 2009 amendment, effective July 1, 2009, substituted "Department of Behavioral Health and Developmental Disabilities" for "Department of Human Resources" in paragraph (23.5).

The 2010 amendment, effective May 20, 2010, in paragraph (14.1), inserted "by a means" in the middle of the first sentence and added the last sentence.

The 2011 amendments. — The first 2011 amendment, effective July 1, 2011, inserted "assisted living community," in paragraph (18.1). The second 2011 amendment, effective May 11, 2011, added paragraph (37.1). The third 2011 amendment, effective July 1, 2011, rewrote paragraph (38.5).

The 2012 amendment, effective July 1, 2012, added paragraph (37.2).

Editor's notes. — Ga. L. 2004, p. 738, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Patient Safe Prescription Drug Act.'"

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 269 (2011).

ARTICLE 2

STATE BOARD OF PHARMACY

26-4-28. Powers, duties, and authority.

(a) The board shall have the power, duty, and authority for the control and regulation of the practice of pharmacy in the State of Georgia including, but not limited to, the following:

(1) The licensing by examination or by license transfer of applicants who are qualified to engage in the practice of pharmacy under the provisions of this chapter;

(2) The renewal of licenses to engage in the practice of pharmacy;

(3) The establishment and enforcement of compliance with professional standards and rules of conduct of pharmacists engaged in the practice of pharmacy;

(4) The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training including internship;

(5) The enforcement of those provisions of this chapter relating to the conduct or competence of pharmacists practicing in this state and the suspension, revocation, or restriction of licenses to engage in the practice of pharmacy;

(6) The licensure and regulation of pharmacies and pharmacy interns;

(7)(A) The regulation of other employees in the prescription or pharmacy department, including but not limited to the registration and regulation of pharmacy technicians. The board shall be required to establish the minimum qualifications for the registration of pharmacy technicians and shall be authorized to require the completion of a background check and criminal history record check for each person applying for registration as a pharmacy technician in this state. The certificate of registration, once issued, may be valid for no more than two years and shall be renewable biennially upon payment of a renewal fee and compliance with such other conditions as the board may establish by rule or regulation.

The board shall be authorized to deny registration, to deny renewal, or to revoke or suspend the registration of a pharmacy technician for any of the grounds set forth in Code Section 26-4-60 or Code Section 43-1-19. However, said denial of a technician application, denial of the renewal of a certificate, or suspension or revocation of a technician registration shall not be considered a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but said applicant or registrant shall be entitled to an appearance before the board. The board shall be required to establish and maintain a registry of pharmacy technicians in this state which contains the name and home address of each pharmacy technician and his or her employer and location of employment. The board shall establish a process by which the pharmacist in charge of each pharmacy shall provide updated information on the pharmacy technicians in the pharmacy. The board may establish and collect fees from pharmacy technicians, their employers, or both for the registration of pharmacy technicians and maintenance of the registry.

(B)(i) In enforcing this paragraph, the board may, upon reasonable grounds, require a registrant or applicant to submit to a mental or physical examination by licensed health care providers designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing as a pharmacy technician in this state or who shall file an application for a certificate of registration to practice pharmacy in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a registrant or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any registrant or applicant who is prohibited from practicing as a pharmacy technician under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin practicing as a pharmacy technician with reasonable skill and safety to patients.

(ii) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a registrant or applicant, includ-

ing psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing as a pharmacy technician in this state or who shall file an application for a certificate of registration to practice as a pharmacy technician in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitutes a privileged communication.

(iii) If any registrant or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in division (i) of this subparagraph or the records relating to the mental or physical condition of such registrant or applicant obtained pursuant to division (ii) of this subparagraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any registrant or applicant in any other type of proceeding;

(8) The collection of professional demographic data;

(9) The right to seize any such drugs and devices found by the board to constitute an imminent danger to the public health and welfare;

(10) The establishment of minimum specifications for the physical facilities, technical equipment, environment, supplies, personnel, and procedures for the storage, compounding, and dispensing of such drugs or devices utilized within the practice of pharmacy;

(11) The establishment of minimum standards for the purity and quality of such drugs utilized within the practice of pharmacy;

(12) The establishment of minimum standards for the purity and quality of such devices and other materials utilized within the practice of pharmacy;

(12.1) The licensure for the use of remote automated medication systems and the regulation and establishment of minimum standards for the use and operation of remote automated medication systems to ensure safe and efficient dispensing, including, but not limited to, appropriate security measures, requirements for skilled nursing facilities and hospices that utilize such systems, training requirements, accuracy and quality assurance measures,

recordkeeping requirements, and such other appropriate requirements as determined by the board. The board may establish rules and regulations to implement the requirements of this paragraph;

(13) The issuance and renewal of licenses of all persons engaged in the manufacture and distribution of drugs;

(14) The issuance and renewal of licenses of all persons engaged in the manufacture and distribution of devices utilized within the practice of pharmacy;

(15) The inspection of any licensed person at all reasonable hours for the purpose of determining if any provisions of the laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board and its officers, agents, and designees shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to drugs, devices, and the practice of pharmacy;

(16) The investigation of alleged violations of this chapter or any other law in this state pertaining to, or in connection with, persons or firms licensed by the board or otherwise authorized by the laws of this state to manufacture, sell, distribute, dispense, or possess drugs, medicines, poisons, cosmetics, or devices, as related to misbranded or counterfeit drugs, or any rules and regulations promulgated by the board under this chapter; the conducting of investigative interviews or full board hearings, with or without the necessity of utilizing the Office of State Administrative Hearings, in respect thereto when in its discretion it appears to be necessary; and the bringing of such violations to the notice of the Attorney General;

(17) The listing at any time upon either a list under Article 3 of Chapter 13 of Title 16, the "Dangerous Drug Act," or upon a schedule under Article 2 of Chapter 13 of Title 16, the "Georgia Controlled Substances Act," of any drug found to be potentially dangerous to public safety if dispensed without prescription;

(18) The expunging of the pharmacy related practice record of any pharmacist whose record consists of a sole sanction resulting from alcohol impairment and whose pharmacy related practice record during a five-year time period dating from the time of the sanction has incurred no additional charges or infractions;

(19) Restricting the inspection or examination of records or access to any area licensed and under the control of any registrant, which has been issued a permit by the board, to members of the board, agents for the Georgia Drugs and Narcotics Agency, the United States Drug Enforcement Administration, the Georgia Department of Medical Assistance, or other federal agencies or agencies of this state

otherwise entitled to such inspections or examinations by law, subpoena, or court order. This paragraph specifically prohibits inspections or examinations of board registrants or any requirement which forces board registrants to allow inspection or examination, or both, of their records by representatives for any nongovernment affiliated, private organization for any purpose since the access of patient prescription records is restricted by this chapter and access by such private organizations is unnecessary in that this access only duplicates existing record-keeping and inspection requirements already addressed by the laws and regulations of the board and other government organizations. This restriction shall also prohibit a private, nongovernment affiliated organization from examining or copying continuing education certificates maintained by individual registrants. Nothing in this paragraph shall prohibit the pharmacist in charge from voluntarily allowing appropriate agencies and organizations to inspect or examine the records and pharmacy area under the control of the pharmacist in charge provided such inspections or examinations are for the purposes of ensuring the quality of care provided to patients;

(20) The requiring of background checks, including, but not limited to, criminal history record checks, on any persons or firms applying for licensure or registration pursuant to this chapter; and

(21) Serving as the sole governmental or other authority which shall have the authority to approve or recognize accreditation or certification programs for specialty pharmacy practice or to determine the acceptability of entities which may accredit pharmacies or certify pharmacists in a specialty of pharmacy practice, and the board may require such accreditation or certification as a prerequisite for specialty or advanced pharmacy practice. Such accreditation and certification standards for specialties shall be set forth in rules promulgated by the board with such rules to contain the required qualifications or limitations. Any accreditation or certification for specialty pharmacy practice approved or recognized by the board shall be deemed sufficient to meet any and all standards, licensure, or requirements, or any combination thereof, otherwise set forth by any private entity or other government agency to satisfy its stated goals and standards for such accreditation or certification. Nothing in this paragraph shall prohibit private entities, government agencies, professional organizations, or educational institutions from submitting accreditation or certification programs for the review and potential approval or recognition by the board. Accreditation and certification for specialty pharmacy practice under this paragraph shall be subject to the following conditions:

(A) Applications shall be submitted as set forth in rules promulgated or approved by the board for accreditation or certification;

(B) Only a pharmacist registered by this state and maintaining an active license in good standing is eligible for certification in a specialty pharmacy practice by the board;

(C) Only a pharmacy registered by this state and maintaining an active license in good standing is eligible for accreditation for specialty pharmacy practice by the board;

(D) Any board approved or recognized accreditation for a specialty pharmacy practice of a pharmacy is to be deemed sufficient and shall satisfy any standards or qualifications required for payment of services rendered as set forth by any insurance company, carrier, or similar third-party payor plan in any policy or contract issued, issued for delivery, delivered, or renewed on or after July 1, 1999;

(E) Any board approved or recognized specialty certification issued to a pharmacist is deemed sufficient and shall satisfy any standards or qualifications required for payment of services rendered as set forth by any insurance company, carrier, or similar third-party payor plan in any policy or contract issued, issued for delivery, delivered, or renewed on or after July 1, 1999; and

(F) The board may deny, revoke, limit, suspend, probate, or fail to renew the accreditation or specialty certification of a pharmacy, pharmacist, or both for cause as set forth in Code Section 26-4-60 or for a violation of Chapter 13 of Title 16 or if the board determines that a pharmacy, pharmacist, or both, no longer meet the accreditation or certification requirements of the board. Before such action, the board shall serve upon the pharmacist in charge of a pharmacy or pharmacist an order to show cause why accreditation or certification should not be denied, revoked, limited, suspended, or probated or why the renewal should not be refused. The order to show cause shall contain a statement for the basis therefor and shall call upon the pharmacist in charge of a pharmacy, the pharmacist, or both, to appear before the board at a time and place not more than 60 days after the date of the service of the order.

(b) Proceedings by the board in the exercise of its authority to cancel, suspend, or revoke any license issued under the terms of this chapter shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In all such proceedings the board shall have authority to compel the attendance of witnesses and the production of any book, writing, or document upon the issuance of a subpoena therefor signed by the secretary of the board. In any hearing in which the fitness of a licensee or applicant to practice pharmacy is in question, the board may exclude all persons from its deliberation of the appropriate action to be taken and may, when it deems it necessary, speak to a licensee or applicant in private.

(c) The board shall have such other duties, powers, and authority as may be necessary to the enforcement of this chapter and to the enforcement of board rules made pursuant thereto which shall include, but are not limited to, the following:

(1) The board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board;

(2) The board may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee at the time his or her license is suspended or revoked or at the time the board refuses to renew his or her license. Except as otherwise provided in this Code section, drugs or devices so sealed shall not be disposed of until appeal rights under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," have expired, or an appeal filed pursuant to such chapter has been determined. The court involved in an appeal filed pursuant to such chapter may order the board, during the pendency of the appeal, to sell sealed drugs that are perishable. The proceeds of such a sale shall be deposited with that court;

(3) Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers, and authority in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(4) In addition to the fees specifically provided for in this chapter, the board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this chapter or the rules and regulations promulgated by the board. Such services rendered shall include but not be limited to the following:

(A) Issuance of duplicate certificates or identification cards;

(B) Certification of documents;

(C) License transfer;

(D) Examination administration to a licensure applicant; and

(E) Examination materials; and

(5) Cost recovery.

(A) For any order issued in resolution of a disciplinary proceeding before the board, the board may direct any licensee found guilty of a charge involving a violation of any drug laws or rules to pay to the board a sum not to exceed the reasonable costs of the investi-

gation and prosecution of the case and, in any case, not to exceed $25,000.00. The costs to be assessed shall be fixed by the board and the costs so recovered shall be paid to the state treasury; and

(B) In the case of a pharmacy or wholesale distributor, the order issued may be made to the corporate owner, if any, and to any pharmacist, officer, owner, or partner of the pharmacy or wholesale distributor who is found to have had knowledge of or have participated knowingly in one or more of the violations set forth in this Code section.

Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for payment in the court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any person directed to pay costs. In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment. (Code 1981, § 26-4-28, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 277, §§ 2, 3; Ga. L. 2007, p. 229, § 1/HB 330; Ga. L. 2011, p. 308, § 6/HB 457; Ga. L. 2011, p. 541, § 1/SB 81; Ga. L. 2012, p. 775, § 26/HB 942.)

The 2007 amendment, effective July 1, 2010, in paragraph (a)(7), added ", including but not limited to the registration and regulation of pharmacy technicians." at the end of the first sentence and added the second through eighth sentences; deleted "and" at the end of paragraph (a)(19); added paragraph (a)(20); and redesignated former paragraph (a)(20) as present paragraph (a)(21).

The 2011 amendments. — The first 2011 amendment, effective May 11, 2011, added paragraph (a)(12.1). The second 2011 amendment, effective July 1, 2011, redesignated former paragraph (a)(7) as present subparagraph (a)(7)(A); substituted a period for a semicolon at the end of present subparagraph (a)(7)(A); and added subparagraph (a)(7)(B).

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised punctuation at the end of paragraph (a)(12.1).

Editor's notes. — Ga. L. 2007, p. 229, § 5, not codified by the General Assembly, provides that the 2007 amendment becomes effective only if funds are specifically appropriated for purposes of the Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2010 session of the General Assembly and thus the 2007 amendment became effective July 1, 2010.

26-4-29. Georgia Drugs and Narcotics Agency; continuance; appointment, requirements, and duties of director; power to make arrests; report of violations of drug laws; dangerous drug list.

(a) The agency created in 1908 as the Office of the Chief Drug Inspector and known as the Georgia Drugs and Narcotics Agency since 1976 is continued in existence as the Georgia Drugs and Narcotics

Agency. This agency shall be a budget unit as defined under Code Section 45-12-71; provided, however, that the agency shall be assigned for administrative purposes only, as defined in Code Section 50-4-3, to the office of the Secretary of State. The Georgia Drugs and Narcotics Agency is authorized by this Code section to enforce the drug laws of this state. The board shall appoint a director who shall be charged with supervision and control of such agency. The agency shall employ the number of personnel deemed necessary to properly protect the health, safety, and welfare of the citizens of this state. Such personnel shall be pharmacists registered in this state when employed as either special agents or the deputy director.

(b) The director shall hold office at the pleasure of the board, and should any vacancy occur in said office for any cause whatsoever, said board shall appoint a successor at a regular or called meeting. The director shall be a pharmacist registered in this state. The salary of the director shall be fixed by the board. The whole time of the director shall be at the disposal of the board. The director, or agency personnel acting on behalf of the director, shall have the duty and the power to:

(1) Visit and inspect factories, warehouses, wholesaling establishments, retailing establishments, chemical laboratories, and such other establishments in which any drugs, devices, cosmetics, and such articles known as family remedies, grocer's drugs, and toilet articles are manufactured, processed, packaged, sold at wholesale, sold at retail, or otherwise held for introduction into commerce;

(2) Enter and inspect any vehicle used to transport or hold any drugs, devices, cosmetics, or any of the articles listed in paragraph (1) of this subsection;

(3) Investigate alleged violations of laws and regulations regarding drugs, devices, cosmetics, or any of the articles listed in paragraph (1) of this subsection;

(4) Take up samples of the articles listed in paragraph (1) of this subsection from any of the said establishments for examination and analysis by the state chemist, or under such person's direction and supervision, as provided by Code Section 26-4-131;

(5) Seize and take possession of all articles which are declared to be contraband under Chapter 13 of Title 16 and Chapter 3 of this title and this chapter and deliver such articles to the agency;

(6) Compel the attendance of witnesses and the production of evidence on behalf of the board via a subpoena issued by the director, when there is reason to believe any violations of laws or regulations concerning drugs, devices, cosmetics, or any of the articles listed in paragraph (1) of this subsection have occurred; and

(7) Perform such other duties as may be directed by the board.

(c)(1) The director, deputy director, and special agents of the Georgia Drugs and Narcotics Agency shall have the authority and power that sheriffs possess to make arrests of any persons violating or charged with violating Chapter 13 of Title 16 and Chapter 3 of this title and this chapter. The deputy director and special agents shall be required to be P.O.S.T. certified peace officers under Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act."

(2) In case of such arrest, the director, deputy director, or any of the special agents shall immediately deliver the person so arrested to the custody of the sheriff of the county wherein the offense is alleged to have been committed. The duty of the sheriff in regard to the person delivered to the sheriff by any such person arrested under power of this Code section shall be the same as if the sheriff had made the original arrest.

(c.1) When the deputy director or a special agent employed by the Georgia Drugs and Narcotics Agency leaves the agency under honorable conditions after accumulating 25 years of service in the agency, as a result of a disability arising in the line of duty, or pursuant to approval by the State Board of Pharmacy, such director or agent shall be entitled to retain his or her weapon and badge pursuant to approval by the State Board of Pharmacy, and, upon leaving the agency, the director of the Georgia Drugs and Narcotics Agency shall retain his or her weapon and badge pursuant to approval by the State Board of Pharmacy.

(d) Except as otherwise provided in this chapter, upon receiving a summary report from agency personnel, the director shall report to the board what have been determined to be violations of the drug laws and rules over which the board has authority. After such reports have been made to the board, the board can instruct the director to:

(1) Cite any such person or establishment to appear before the cognizant member of the board for an investigative interview;

(2) Forward such reports to the Attorney General's office for action decided on by the board; or

(3) Take whatever other action the board deems necessary.

(e) The Georgia Drugs and Narcotics Agency shall compile and submit to the General Assembly during each annual legislative session a list of known dangerous drugs as defined in subsection (a) of Code Section 16-13-71 and any other drugs or devices which the board has determined may be dangerous or detrimental to the public health and safety and should require a prescription, and the Georgia Drugs and Narcotics Agency shall assist the State Board of Pharmacy during each

annual legislative session by compiling and submitting a list of substances to add to or reschedule substances enumerated in the schedules in Code Sections 16-13-25 through 16-13-29 by using the guidelines set forth in Code Section 16-13-22.

(1) The State Board of Pharmacy is authorized and directed to publish in print or electronically and distribute the "Dangerous Drug List" as prepared by the Georgia Drugs and Narcotics Agency and the "Georgia Controlled Substances Act" as enacted by law.

(2) The Georgia State Board of Pharmacy shall provide for a fee as deemed reasonable or at no cost, such number of copies of the "Dangerous Drug List" and "Georgia Controlled Substances Act" to law enforcement officials, school officials, parents, and other interested citizens as are required. (Code 1981, § 26-4-29, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraph (e)(1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "45-12-71" was substituted for "45-12-7" in subsection (a).

ARTICLE 3

PRACTICE OF PHARMACY

26-4-41. Qualifications for license; examination; internship and other training programs.

(a) **Qualifications.** To obtain a license to engage in the practice of pharmacy, an applicant for licensure by examination shall:

(1) Have submitted an application in the form prescribed by the board;

(2) Have attained the age of majority;

(3) Be of good moral character;

(4) Have graduated and received a professional undergraduate degree from a college or school of pharmacy as the same may be approved by the board; provided, however, that, since it would be impractical for the board to evaluate a school or college of pharmacy located in another country, the board may accept a graduate from such a school or college so long as the graduate has completed all requirements of the Foreign Pharmacy Equivalency Certification Program administered by the National Association of Boards of Pharmacy. This shall include successful completion of all required examinations and the issuance of the equivalency certificate and be

based upon an individual evaluation by the board of the applicant's educational experience, professional background, and proficiency in the English language;

(5) Have completed an internship or other program that has been approved by the board or demonstrated to the board's satisfaction that experience in the practice of pharmacy which meets or exceeds the minimum internship requirements of the board;

(6) Have successfully passed an examination or examinations approved by the board; and

(7) Have paid the fees specified by the board for the examination and any related materials and have paid for the issuance of the license.

(b) **Examinations.**

(1) The examination for licensure required under paragraph (6) of subsection (a) of this Code section shall be made available at least two times during each year. The board shall determine the content and subject matter of each examination, and the place, time, and date of administration of the examination.

(2) The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ, cooperate, and contract with any organization or consultant in the preparation and grading of an examination, but shall retain the sole discretion and responsibility for determining which applicants have successfully passed such an examination.

(3) Any person who takes the board approved examination and fails the examination may repeat the examination at regular intervals of administration; however, a person shall not take the examination more than three times without permission from the board. A person who has taken the board approved examination and failed the examination for the third time shall not practice as a pharmacy intern. A person who takes the board approved examination and successfully completes the examination must become licensed within two years of the examination date or the results of the examination shall become invalid.

(c) **Internship and other training programs.**

(1) All applicants for licensure by examination shall obtain practical experience in the practice of pharmacy concurrent with or after college attendance or both under such terms and conditions as the board shall determine.

(2) The board shall establish such licensure requirements for interns and standards for internship or any other experiential

program necessary to qualify an applicant for the licensure examination and shall also determine the qualifications of preceptors used in practical experience programs. (Code 1981, § 26-4-41, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 277, § 4; Ga. L. 2000, p. 136, § 26; Ga. L. 2010, p. 266, § 2/SB 195; Ga. L. 2011, p. 752, § 26/HB 142.)

The 2010 amendment, effective May 20, 2010, in subsection (a), substituted "an application" for "a written application" in paragraph (a)(1) and substituted "so long as" for "as long as" in the middle of the first sentence of paragraph (a)(4); and, in subsection (b), in paragraph (b)(1), deleted "by the board" following "available" in the middle and substituted a period for a semicolon, substituted a period for "; and" at the end of paragraph (b)(2), and, in paragraph (b)(3), inserted "approved" three times and substituted "shall" for "may" twice.

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted a period for "; and" at the end of paragraph (c)(1).

26-4-42. License transfers for pharmacists licensed in another jurisdiction.

(a) In order for a pharmacist currently licensed in another jurisdiction to obtain a license as a pharmacist by license transfer in this state, an applicant shall:

(1) Complete and file a form applying for licensure with the board, which form shall include the applicant's name, address, and other such information as prescribed by the board, and, after an investigation by agents acting on behalf of the board, if so requested by the board, produce evidence satisfactory to the board which shows the applicant has the age, moral character, background, education, and experience demanded of applicants for registration by examination under this chapter and by the rules and regulations promulgated under this chapter;

(2) Have attained the age of majority;

(3) Be of good moral character;

(4) Have possessed at the time of initial licensure as a pharmacist all qualifications necessary to have been eligible for licensure at that time in this state;

(5) Have presented to the board proof of initial licensure by examination and proof that such license is in good standing;

(6) Have presented to the board proof that any other license granted to the applicant by any other state has not been suspended, revoked, or otherwise restricted for any reason except nonrenewal or for the failure to obtain the required continuing education credits in any state where the applicant is currently licensed but not engaged in the practice of pharmacy;

(7) Have successfully passed an examination by the board on Georgia pharmacy law and board regulations; and

(8) Have paid the fees specified by the board.

(b) No applicant shall be eligible for license transfer unless the state in which the applicant was licensed as a pharmacist also grants licensure transfer to pharmacists duly licensed by examination in this state under like circumstances and conditions.

(c) To obtain a license to engage in the practice of pharmacy in this state, a pharmacist who is a graduate of a pharmacy school or college located in another country must complete all requirements of the Foreign Pharmacy Equivalency Certification Program administered by the National Association of Boards of Pharmacy. This shall include without being limited to successful completion of all required examinations, the issuance of the equivalency certificate, and an individual evaluation by the board of the applicant's proficiency in the English language. Additionally, a foreign pharmacy graduate applicant shall:

(1) Have submitted an application in the form prescribed by the board;

(2) Have attained the age of majority;

(3) Be of good moral character;

(4) Have possessed at the time of initial licensure as a pharmacist all qualifications necessary to have been eligible for licensure at that time in this state;

(5) Have graduated and been granted a pharmacy degree from a college or school of pharmacy recognized by the National Association of Boards of Pharmacy Foreign Pharmacy Graduate Examination Committee;

(6) Have successfully passed an examination approved by the board; and

(7) Have paid the fees specified by the board. (Code 1981, § 26-4-42, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 277, § 5; Ga. L. 2010, p. 266, § 3/SB 195.)

The 2010 amendment, effective May 20, 2010, in subsection (c), substituted "examinations, the" for "examinations and the" in the second sentence of the introductory paragraph and substituted "an application" for "a written application" in paragraph (c)(1).

26-4-44.2. Exceptions for active duty service members.

(a) As used in this Code section, the term "service member" means an active duty member of the regular or reserve component of the United

States Armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard who was on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose license issued pursuant to this article expired while such service member was serving on active duty outside the state shall be permitted to practice pharmacy in accordance with such expired license and shall not be charged with a violation of this chapter related to practicing pharmacy with an expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within the state. Any such service member shall be entitled to renew such expired license without penalty within six months after the date of his or her discharge from active duty or reassignment to a location within the state. The service member must present to the board either a copy of the official military orders or a written verification signed by the service member's commanding officer to waive any charges. (Code 1981, § 26-4-44.2, enacted by Ga. L. 2005, p. 213, § 2/SB 258.)

Effective date. — This Code section became effective July 1, 2005.

26-4-46. Pharmacy interns — Eligibility and requirements for licenses.

(a) To obtain a license as a pharmacy intern, an applicant shall:

(1) Have submitted an application in the form prescribed by the board of pharmacy;

(2) Have attained the age of majority;

(3) Be of good moral character; and

(4) Have paid the fees specified by the board for the issuance of the license.

(b) The following individuals shall be eligible to be licensed as a pharmacy intern:

(1) A student who is currently enrolled in an approved school or college of pharmacy;

(2) An individual who is a graduate of an approved school or college of pharmacy who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(3) An individual who does not meet the requirements of paragraphs (1) and (2) of this subsection and is a graduate of a pharmacy school or college located in another country but who has completed all

requirements of the Foreign Pharmacy Equivalency Certification Program administered by the National Association of Boards of Pharmacy. This shall include without being limited to successful completion of all required examinations, the issuance of the equivalency certificate, and an individual evaluation by the board of the applicant's proficiency in the English language.

(c) The board shall approve all internship programs for the purpose of providing the practical experience necessary for licensure as a pharmacist. A pharmacy intern is authorized to engage in the practice of pharmacy under the supervision of a pharmacist. The board shall adopt rules regarding the licensure of interns and the standards for internship programs. (Code 1981, § 26-4-46, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 277, § 7; Ga. L. 2010, p. 266, § 4/SB 195.)

The 2010 amendment, effective May 20, 2010, substituted "an application" for "a written application" in the middle of paragraph (a)(1).

26-4-50. Drug therapy modification certification.

(a) No pharmacist shall be authorized to modify drug therapy pursuant to Code Section 43-34-24 unless that pharmacist:

(1) Is licensed to practice as a pharmacist in this state;

(2) Has successfully completed a course of study regarding modification of drug therapy and approved by the board;

(3) Annually successfully completes a continuing education program regarding modification of drug therapy and approved by the board; and

(4) Is certified by the board as meeting the requirements of paragraphs (1) through (3) of this subsection.

(b) Nothing in this Code section shall be construed to expand or change any existing authority for a pharmacist to substitute drugs. (Code 1981, § 26-4-50, enacted by Ga. L. 2000, p. 558, § 1; Ga. L. 2009, p. 859, § 6/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted "Code Section 43-34-24" for "Code Section 43-34-26.2" in the introductory language of subsection (a).

ARTICLE 4

DISCIPLINE

26-4-60. Grounds for suspension, revocation, or refusal to grant licenses.

(a) The board of pharmacy may refuse to issue or renew, or may suspend, revoke, or restrict the licenses of, or fine any person pursuant to the procedures set forth in this Code section, upon one or more of the following grounds:

(1) Unprofessional conduct as that term is defined by the rules of the board;

(2) Incapacity that prevents a licensee from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public;

(3) Being guilty of one or more of the following:

(A) A felony;

(B) Any act involving moral turpitude; or

(C) Violations of the pharmacy or drug laws of this state, or rules and regulations pertaining thereto, or of laws, rules, and regulations of any other state, or of the federal government;

(4) Misrepresentation of a material fact by a licensee in securing the issuance or renewal of a license;

(5) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license falsely using the title of "pharmacist" or "pharmacy intern," or falsely using the term "pharmacy" in any manner;

(6) Failing to pay the costs assessed in a disciplinary hearing pursuant to subsection (c) of Code Section 26-4-28;

(7)(A) Becoming unfit or incompetent to practice pharmacy by reason of:

(i) Intemperance in the use of alcoholic beverages, narcotics, or habit-forming drugs or stimulants; or

(ii) Any abnormal physical or mental condition which threatens the safety of persons to whom such person may compound or dispense prescriptions, drugs, or devices or for whom he or she might manufacture, prepare, or package or supervise the manufacturing, preparation, or packaging of prescriptions, drugs, or devices.

(B) In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by licensed health care providers designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing pharmacy in this state or who shall file an application for a license to practice pharmacy in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board, upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing pharmacy under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin the practice of pharmacy with reasonable skill and safety to patients.

(C) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-9-21. Every person who shall accept the privilege of practicing pharmacy in this state or who shall file an application for a license to practice pharmacy in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board, upon the grounds that the same constitutes a privileged communication.

(D) If any licensee or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (B) of this paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subparagraph (C) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee or applicant in any other type of proceeding;

(8) Being adjudicated to be mentally ill or insane;

(9) Violating any rules and regulations promulgated by the board;

(10) Promoting to the public in any manner a drug which may be dispensed only pursuant to prescription;

(11) Regularly employing the mails or other common carriers to sell, distribute, and deliver a drug which requires a prescription directly to a patient; provided, however, that this provision shall not prohibit the use of the mails or other common carriers to sell, distribute, and deliver a prescription drug directly to:

(A) A patient or directly to a patient's guardian or caregiver or a physician or physician acting as the patient's agent for whom the prescription drug was prescribed if:

(i) Such prescription drugs are prescribed for complex chronic, terminal, or rare conditions;

(ii) Such prescription drugs require special administration, comprehensive patient training, or the provision of supplies and medical devices or have unique patient compliance and safety monitoring requirements;

(iii) Due to the prescription drug's high monetary cost, short shelf life, special manufacturer specified packaging and shipping requirements or instructions which require temperature sensitive storage and handling, limited availability or distribution, or other factors, the drugs are not carried in the regular inventories of retail pharmacies such that the drugs could be immediately dispensed to multiple retail walk-in patients;

(iv) Such prescription drug has an annual retail value to the patient of more than $10,000.00;

(v) The patient receiving the prescription drug consents to the delivery of the prescription drug via expedited overnight common carrier and designates the specialty pharmacy to receive the prescription drug on his or her behalf;

(vi) The specialty pharmacy utilizes, as appropriate and in accordance with standards of the manufacturer, United States Pharmacopeia, and Federal Drug Administration and other standards adopted by the State Board of Pharmacy, temperature tags, time temperature strips, insulated packaging, or a combination of these; and

(vii) The specialty pharmacy establishes and notifies the enrollee of its policies and procedures to address instances in which medications do not arrive in a timely manner or in which they have been compromised during shipment and to assure that the pharmacy replaces or makes provisions to replace such drugs;

(B) An institution or to sell, distribute, or deliver prescription drugs, upon his or her request, to an enrollee in a health benefits plan of a group model health maintenance organization or its affiliates by a pharmacy which is operated by that same group model health maintenance organization and licensed under Code Section 26-4-110 or to a patient on behalf of a pharmacy. Any pharmacy using the mails or other common carriers to dispense prescriptions pursuant to this paragraph shall comply with the following conditions:

(i) The pharmacy shall provide an electronic, telephonic, or written communications mechanism which reasonably determines whether the medications distributed by the mails or other common carriers have been received by the enrollee and through which a pharmacist employed by the group model health maintenance organization or a pharmacy intern under his or her direct supervision is enabled to offer counseling to the enrollee as authorized by and in accordance with his or her obligations under Code Section 26-4-85, unless the enrollee refuses such consultation or counseling pursuant to subsection (e) of such Code section. In addition, the enrollee shall receive information indicating what he or she should do if the integrity of the packaging or medication has been compromised during shipment;

(ii) In accordance with clinical and professional standards, the State Board of Pharmacy shall promulgate a list of medications which may not be delivered by the mails or other common carriers. However, until such list is promulgated, the group model health maintenance organization shall not deliver by use of the mails or other common carriers Class II controlled substance medications, medications which require refrigeration, chemotherapy medications deemed by the federal Environmental Protection Agency as dangerous, medications in suppository form, and other medications which, in the professional opinion of the dispensing pharmacist, may be clinically compromised by distribution through the mail or other common carriers;

(iii) The pharmacy shall utilize, as appropriate and in accordance with standards of the manufacturer, United States Pharmacopeia, and Federal Drug Administration and other standards adopted by the State Board of Pharmacy, temperature tags, time temperature strips, insulated packaging, or a combination of these; and

(iv) The pharmacy shall establish and notify the enrollee of its policies and procedures to address instances in which medications do not arrive in a timely manner or in which they have been

compromised during shipment and to assure that the pharmacy replaces or makes provisions to replace such drugs.

For purposes of subparagraph (B) of this paragraph, the term "group model health maintenance organization" means a health maintenance organization that has an exclusive contract with a medical group practice to provide or arrange for the provision of substantially all physician services to enrollees in health benefits plans of the health maintenance organization; or

(C) A pharmacist or pharmacy to dispense a prescription and deliver it to another pharmacist or pharmacy to make available for a patient to receive the prescription and patient counseling according to Code Section 26-4-85. The State Board of Pharmacy shall adopt any rules and regulations necessary to implement this subparagraph.

(12) Unless otherwise authorized by law, dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the prior authorization of the practitioner ordering or prescribing the same;

(13) Violating or attempting to violate a statute, law, any lawfully promulgated rule or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which statute, law, rule, or regulation relates to or in part regulates the practice of pharmacy, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violating either a public or confidential lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement; or

(14) Having his or her license to practice pharmacy revoked, suspended, or annulled by any lawful licensing authority of this or any other state, having disciplinary action taken against him or her by any lawful licensing authority of this or any other state, or being denied a license by any lawful licensing authority of this or any other state.

(b) The board shall have the power to suspend or revoke the license of the pharmacist in charge when a complete and accurate record of all controlled substances on hand, received, manufactured, sold, dispensed, or otherwise disposed of has not been kept by the pharmacy in conformance with the record-keeping and inventory requirements of federal law and the rules of the board.

(c) Any person whose license to practice pharmacy in this state has been suspended, revoked, or restricted pursuant to this chapter,

whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license pursuant to rules and regulations promulgated by the board. Such petition shall be made in writing and in the form prescribed by the board. The board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

(d) Nothing in this Code section shall be construed as barring criminal prosecutions for violations of this chapter.

(e) All final decisions by the board shall be subject to judicial review pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(f) Any individual or entity whose license to practice pharmacy is revoked, suspended, or not renewed shall return his or her license to the offices of the board within ten days after receipt of notice of such action.

(g) For purposes of this Code section, a conviction shall include a finding or verdict of guilty, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon.

(h) Nothing in this Code section shall be construed as barring or prohibiting pharmacists from providing or distributing health or drug product information or materials to patients which are intended to improve the health care of patients.

(i) The board shall have the power to suspend any license issued under Article 3 of this chapter when such holder is not in compliance with a court order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3. The board shall also have the power to deny the application for issuance or renewal of a license under Article 3 of this chapter when such applicant is not in compliance with a court order for child support as provided in either of such Code sections. The hearings and appeals procedures provided for in such Code sections shall be the only such procedures required to suspend or deny any license issued under Article 3 of this chapter.

(j) Nothing in this chapter shall prohibit any person from assisting any duly licensed pharmacist or practitioner in the measuring of quantities of medication and the typing of labels therefor, but excluding the dispensing, compounding, or mixing of drugs, provided that such duly licensed pharmacist or practitioner shall be physically present in the dispensing area and actually observing the actions of such person in doing such measuring and typing, and provided, further, that no prescription shall be given to the person requesting the same unless the

contents and the label thereof shall have been verified by a licensed pharmacist or practitioner.

(k) The board shall have the power to suspend any license issued under Article 3 of this chapter when such holder is a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295. The board shall also have the power to deny the application for issuance or renewal of a license under Article 3 of this chapter when such applicant is a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295. The hearings and appeals procedures provided for in Code Section 20-3-295 shall be the only such procedures required to suspend or deny any license issued under Article 3 of this chapter. (Code 1981, § 26-4-60, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 277, § 8; Ga. L. 2006, p. 444, § 1/HB 246; Ga. L. 2007, p. 463, § 1/SB 205; Ga. L. 2011, p. 541, § 2/SB 81; Ga. L. 2012, p. 1092, § 1/SB 346.)

The 2006 amendment, effective July 1, 2006, substituted the present provisions of paragraph (a)(11) for the former provisions, which read: "Regularly employing the mails or other common carriers to sell, distribute, and deliver a drug which requires a prescription directly to a patient; however, this provision shall not prohibit the use of the mails or other common carriers to sell, distribute, and deliver a prescription drug directly to an institution;".

The 2007 amendment, effective July 1, 2007, in paragraph (a)(11), added subparagraph (a)(11)(A), added the subparagraph (a)(11)(B) designation, substituted "An" for "an", redesignated former subparagraphs (a)(11)(A) through (a)(11)(D) as present subdivisions (a)(11)(B)(i) through (a)(11)(B)(iv), respectively, and inserted "subparagraph (B) of" near the beginning of the ending undesignated paragraph.

The 2011 amendment, effective July 1, 2011, redesignated the introductory language in former paragraph (a)(7) as present subparagraph (a)(7)(A); redesignated former subparagraphs (a)(7)(A) and (a)(7)(B) as present divisions (a)(7)(A)(i) and (a)(7)(A)(ii), respectively; substituted a period for a semicolon at the end of present division (a)(7)(A)(ii); and added subparagraphs (a)(7)(B) through (a)(7)(D).

The 2012 amendment, effective July 1, 2012, deleted "or" at the end of division (a)(11)(A)(vii); in subparagraph (a)(11)(B), in the first sentence, substituted "prescription drugs" for "prescription drug refills" near the beginning, and inserted "or to a patient on behalf of a pharmacy" at the end; added "or" at the end of the undesignated text following division (a)(11)(B)(iv); and added subparagraph (a)(11)(C).

ARTICLE 5

PRESCRIPTION DRUGS

26-4-80. (Effective until January 1, 2013. See note.) Dispensing; electronically transmitted drug orders; refills; Schedule II controlled substance prescriptions.

(a) All persons engaging in the practice of pharmacy in this state must be licensed by the board.

(b) Prescription drugs shall be dispensed only pursuant to a valid prescription drug order. A pharmacist shall not dispense a prescription which the pharmacist knows or should know is not a valid prescription.

(c) A prescription drug order may be accepted by a pharmacist or pharmacy intern or extern in written form, orally, via an electronic visual image prescription drug order, or via an electronic data prescription drug order as set forth in this chapter or as set forth in regulations promulgated by the board. Provisions for accepting a prescription drug order for a Schedule II controlled substance are set forth in subsection (l) of this Code section, the board's regulations, or the regulations of the United States Drug Enforcement Administration in 21 C.F.R. 1306. Electronic prescription drug orders shall either be an electronic visual image of a prescription drug order or an electronic data prescription drug order and shall meet the requirements set forth in regulations promulgated by the board. A hard copy prescription prepared by a practitioner or a practitioner's agent, which bears an electronic visual image of the practitioner's signature and is not sent by facsimile, must be printed on security paper. Prescriptions transmitted either electronically or via facsimile shall meet the following requirements:

(1) Electronically transmitted prescription drug orders shall be transmitted by the practitioner or, in the case of a prescription drug order to be transmitted via facsimile, by the practitioner or the practitioner's agent under supervision of the practitioner, to the pharmacy of the patient's choice with no intervening person or intermediary having access to the prescription drug order. For purposes of this paragraph, "intervening person or intermediary" shall not include a person who electronically formats or reconfigures data or information for purposes of integrating into and between computer or facsimile systems of practitioners and pharmacists;

(2) Prescription drug orders transmitted by facsimile or computer shall include:

(A) In the case of a prescription drug order for a dangerous drug, the complete name and address of the practitioner;

(B) In the case of a prescription drug order for a controlled substance, the complete name, address, and DEA registration number of the practitioner;

(C) The telephone number of the practitioner for verbal confirmation;

(D) The name and address of the patient;

(E) The time and date of the transmission;

(F) The full name of the person transmitting the order; and

(G) The signature of the practitioner in a manner as defined in regulations promulgated by the board or, in the case of a controlled substances prescription, in accordance with 21 C.F.R. 1301.22;

(3) An electronically transmitted, issued, or produced prescription drug order which meets the requirements of this Code section shall be deemed the original order;

(4) The pharmacist shall exercise professional judgment regarding the accuracy and authenticity of any electronically transmitted, issued, or produced prescription drug order consistent with federal and state laws and rules and regulations adopted pursuant to the same;

(5) An electronically encrypted, issued, or produced prescription drug order transmitted from a practitioner to a pharmacist shall be considered a highly confidential transaction and the said transmission, issuance, or production shall not be compromised by unauthorized interventions, control, change, altering, manipulation, or accessing patient record information by any other person or party in any manner whatsoever between the time after the practitioner has electronically transmitted, issued, or produced a prescription drug order and such order has been received by the pharmacy of the patient's choice. For purposes of this paragraph, "unauthorized interventions, control, change, altering, manipulation, or accessing patient record information" shall not include electronic formatting or reconfiguring of data or information for purposes of integrating into and between computer or facsimile systems of practitioners and pharmacists;

(6) Any pharmacist that transmits, receives, or maintains any prescription or prescription refill either orally, in writing, or electronically shall ensure the security, integrity, and confidentiality of the prescription and any information contained therein; and

(7)(A) The board shall promulgate rules and regulations under this Code section for institutional settings such as hospital pharmacies, nursing home pharmacies, clinic pharmacies, or pharmacies owned or operated directly by health maintenance organizations.

(B) The rules established pursuant to subparagraph (A) of this paragraph shall specifically authorize hospital pharmacies to use remote order entry when:

(i) The licensed pharmacist is not physically present in the hospital, the hospital pharmacy is closed, and a licensed pharmacist will be physically present in the hospital pharmacy within 16 hours; or

(ii) When at least one licensed pharmacist is physically present in the hospital pharmacy and at least one other licensed pharmacist is practicing pharmacy in the hospital but not physically present in the hospital pharmacy.

(C) Before a hospital may engage in remote order entry as provided in this paragraph, the director of pharmacy of the hospital shall submit to the board written policies and procedures for the use of remote order entry. The required policies and procedures to be submitted to the board shall be in accordance with the American Society of Health-System Pharmacists and shall contain provisions addressing quality assurance and safety, mechanisms to clarify medication orders, processes for reporting medication errors, documentation and record keeping, secure electronic access to the hospital pharmacy's patient information system and to other electronic systems that the on-site pharmacist has access to, access to hospital policies and procedures, confidentiality and security, and mechanisms for real-time communication with prescribers, nurses, and other care givers responsible for the patient's health care.

(D) If the board concludes that the hospital's actual use of remote order entry does not comply with this paragraph or the rules adopted pursuant to this chapter, it may issue a cease and desist order after notice and hearing.

(d) Information contained in the patient medication record or profile shall be considered confidential information as defined in this title. Confidential information may be released to the patient or the patient's authorized representative, the prescriber or other licensed health care practitioners then caring for the patient, another licensed pharmacist, the board or its representative, or any other person duly authorized to receive such information. In accordance with Code Section 24-9-40, confidential information may be released to others only on the written release of the patient, court order, or subpoena.

(e) Except as authorized under subsection (j) of this Code section, a prescription may not be refilled without authorization. When refills are dispensed pursuant to authorization contained on the original prescription or when no refills are authorized on the original prescription but refills are subsequently authorized by the practitioner, the refill authorization shall be recorded on the original prescription document and the record of any refill made shall be maintained on the back of the original prescription document or on some other uniformly maintained record and the dispensing pharmacist shall record the date of the refill, the quantity of the drug dispensed, and the dispensing pharmacist's initials; provided, however, that an original prescription for a Schedule III, IV, or V controlled substance which contains no refill information may

not be authorized to be refilled more than five times or after six months from the date of issuance, whichever occurs first. Authorization for any additional refill of a Schedule III, IV, or V controlled substance prescription in excess of five refills or after six months from the date of issuance of the prescription shall be treated as a new prescription.

(f) When filling a prescription or refilling a prescription which may be refilled, the pharmacist shall exercise professional judgment in the matter. No prescription shall be filled or refilled with greater frequency than the approximate interval of time that the dosage regimen ordered by the prescriber would indicate, unless extenuating circumstances are documented which would justify a shorter interval of time before the filling or refilling of the prescription.

(g) The pharmacist who fills or refills a prescription shall record the date of dispensing and indicate the identity of the dispensing pharmacist on the prescription document or some other appropriate and uniformly maintained record. If this record is maintained on the original prescription document, the original dispensing and any refills must be recorded on the back of the prescription.

(h) When the patient no longer seeks personal consultation or treatment from the practitioner, the practitioner and patient relationship is terminated. A prescription becomes invalid after the practitioner and patient relationship is terminated which is defined as a reasonable period of time not to exceed six months in which the patient could have established a new practitioner and patient relationship as established by the board through the promulgation of rules and regulations.

(i) All prescription drug orders must bear the signature of the prescribing practitioner as defined in Code Section 16-13-21. Physician assistants must comply with all applicable laws regarding signatures. Further, the nature of such signature must meet the requirements set forth in regulations promulgated by the board. A physically applied signature stamp is not acceptable in lieu of an original signature. Except as otherwise provided for in this subsection, when an oral prescription drug order or the oral authorization for the refilling of a prescription drug order is received which has been transmitted by someone other than the practitioner, the name of the individual making the transmission and the date, time, and location of the origin of the transmission must be recorded on the original prescription drug order or other record by the pharmacist receiving the transmission. No one other than the practitioner or an agent authorized by the practitioner shall transmit such prescriptions in any manner. In institutional settings such as hospital pharmacies, nursing home pharmacies, clinic pharmacies, or pharmacies owned or operated directly by health maintenance organizations, the name of the individual making the transmission is not required to be placed on the order.

(j) A pharmacist licensed by the board may dispense up to a 72 hour supply of a prescribed medication in the event the pharmacist is unable to contact the practitioner to obtain refill authorization, provided that:

(1) The prescription is not for a controlled substance;

(2) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;

(3) The dispensing pharmacist notifies the practitioner or his or her agent of the dispensing within seven working days after the prescription is refilled pursuant to this subsection;

(4) The pharmacist properly records the dispensing as a separate nonrefillable prescription. Said document shall be filed as is required of all other prescription records. This document shall be serially numbered and contain all information required of other prescriptions. In addition it shall contain the number of the prescription from which it was refilled;

(5) The pharmacist shall record on the patient's record and on the new document the circumstances which warrant such dispensing; and

(6) The pharmacist does not employ this provision regularly for the same patient on the same medication.

(k) All out-patient prescription drug orders which are dispensed shall be appropriately labeled in accordance with the rules and regulations promulgated by the board as follows:

(1) Before an out-patient prescription drug is released from the dispensing area, the prescription drug shall bear a label containing the name and address of the pharmacy, a prescription number, the name of the prescriber, the name of the patient, directions for taking the medication, the date of the filling or refilling of the prescription, the initials or identifying code of the dispensing pharmacist, and any other information which is necessary, required, or, in the pharmacist's professional judgment, appropriate; and

(2) The pharmacist who fills an out-patient prescription drug order shall indicate the identity of the dispensing pharmacist on the label of the prescription drug. Identification may be made by placing initials on the label of the dispensed drug. The label shall be affixed to the outside of the container of the dispensed drug by means of adhesive or tape or any other means which will assure that the label remains attached to the container.

(l) A Schedule II controlled substance prescription drug order in written form signed in indelible ink by the practitioner may be accepted

by a pharmacist and the Schedule II controlled substance may be dispensed by such pharmacist. Other forms of Schedule II controlled substance prescription drug orders may be accepted by a pharmacist and the Schedule II controlled substance may be dispensed by such pharmacist in accordance with regulations promulgated by the board and in accordance with DEA regulations found in 21 C.F.R. 1306. A pharmacist shall require a person picking up a Schedule II controlled substance prescription to present a government issued photo identification document or such other form of identification which documents legibly the full name of the person taking possession of the Schedule II controlled substance subject to the rules adopted by the board.

(m) No licensee nor any other entity shall be permitted to provide facsimile machines or equipment, computer software, technology, hardware, or supplies related to the electronic transmission of prescription drug orders to any practitioner which restricts such practitioner from issuing prescription drug orders for certain prescription drugs or restricts a patient from choosing the retail pharmacy to which an electronic prescription drug order may be transmitted.

(n) Institutions including, but not limited to, hospitals, long-term care facilities, and inpatient hospice facilities which utilize electronic medical record systems that meet the information requirements for prescription drug orders for patients pursuant to this Code section shall be considered to be in compliance with this Code section.

(o) Nothing in this Code section shall be construed to prohibit any insurance company, hospital or medical service plan, health care provider network, health maintenance organization, health care plan, employer, or other similar entity providing health insurance from offering incentives to pharmacies, pharmacists, and practitioners that accept or utilize electronic data prescription drug orders.

(p) Pharmacists dispensing prescriptions pursuant to a remote automated medication system in accordance with the rules and regulations adopted by the State Board of Pharmacy pursuant to paragraph (12.1) of subsection (a) of Code Section 26-4-28 shall be considered in compliance with this Code section. (Code 1981, § 26-4-80, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 2004, p. 738, §§ 4, 5; Ga. L. 2006, p. 444, § 2/HB 246; Ga. L. 2009, p. 859, § 3/HB 509; Ga. L. 2011, p. 308, § 7/HB 457; Ga. L. 2011, p. 659, § 4/SB 36; Ga. L. 2012, p. 1092, § 1B/SB 346.)

The 2004 amendment, effective July 1, 2004, in subsection (c), substituted "pharmacist, pharmacy intern, or extern in written form, orally, via an electronic visual image prescription drug order, or an electronic data prescription drug order" for "pharmacist or pharmacy intern in written form, orally, via facsimile, or electronically" in the first sentence, added ", the board's regulations, or the regulations of the United States Drug Enforcement administration in 21 C.F.R. 1306" at

the end of the second sentence, added the third and fourth sentences; deleted "and" at the end of subparagraph (c)(2)(E), added "and" at the end of subparagraph (c)(2)(F); and added subparagraph (c)(2)(G), inserted ", issued, or produced prescription" in paragraph (c)(3), substituted "any electronically transmitted, issued, or produced" for "the transmitted" in paragraph (c)(4), and rewrote paragraph (c)(5); rewrote subsection (i); and, in subsection (l), inserted "drug order" in the first sentence and, in the second sentence, inserted "forms of" near the beginning, substituted "drug orders" for "forms" near the middle, and added "and in accordance with DEA regulations found in 21 C.F.R. 1306" at the end; and added subsections (m) through (o).

The 2006 amendment, effective July 1, 2006, in subsection (c), added the last sentence in paragraph (c)(1), and, in paragraph (c)(5), inserted "unauthorized" in the middle of the first sentence, and added the last sentence.

The 2009 amendment, effective July 1, 2009, substituted "Physician assistants" for "Physician's assistants" at the beginning of the second sentence of subsection (i).

The 2011 amendments. — The first 2011 amendment, effective May 11, 2011, added subsection (p). The second 2011 amendment, effective July 1, 2011, added the last sentence to subsection (l).

The 2012 amendment, effective July 1, 2012, designated the existing provisions of paragraph (c)(7) as subparagraph (c)(7)(A); deleted "which may provide specific exceptions" following "rules and regulations" in subparagraph (c)(7)(A); and added subparagraphs (c)(7)(B) through (c)(7)(D).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "pharmacist or pharmacy intern" was substituted for "pharmacist, pharmacy intern," and "or via an" was substituted for "or an" in subsection (c).

Editor's notes. — Ga. L. 2004, p. 738, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Patient Safe Prescription Drug Act.'"

Code Section 26-4-80 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

JUDICIAL DECISIONS

Class action. — Trial court erred in finding that a customer and the proposed class shared common questions of law and fact and that the customer was a sufficiently typical representative of that class under O.C.G.A. § 9-11-23(a)(2) and (a)(3) because the customer did not suffer any actual financial or physical injury as a result of a pharmacy's sale of the customer's medication information to another pharmacy; there was no evidence of any "public" disclosure of the customer's data, and such cases were bound to turn on individual rather than common questions. Rite Aid of Ga., Inc. v. Peacock, No. A11A2133, 2012 Ga. App. LEXIS 319 (Mar. 22, 2012).

26-4-80. (Effective January 1, 2013. See note.) Dispensing; electronically transmitted drug orders; refills; Schedule II controlled substance prescriptions.

(a) All persons engaging in the practice of pharmacy in this state must be licensed by the board.

(b) Prescription drugs shall be dispensed only pursuant to a valid prescription drug order. A pharmacist shall not dispense a prescription which the pharmacist knows or should know is not a valid prescription.

(c) A prescription drug order may be accepted by a pharmacist or pharmacy intern or extern in written form, orally, via an electronic visual image prescription drug order, or via an electronic data prescription drug order as set forth in this chapter or as set forth in regulations promulgated by the board. Provisions for accepting a prescription drug order for a Schedule II controlled substance are set forth in subsection (l) of this Code section, the board's regulations, or the regulations of the United States Drug Enforcement Administration in 21 C.F.R. 1306. Electronic prescription drug orders shall either be an electronic visual image of a prescription drug order or an electronic data prescription drug order and shall meet the requirements set forth in regulations promulgated by the board. A hard copy prescription prepared by a practitioner or a practitioner's agent, which bears an electronic visual image of the practitioner's signature and is not sent by facsimile, must be printed on security paper. Prescriptions transmitted either electronically or via facsimile shall meet the following requirements:

(1) Electronically transmitted prescription drug orders shall be transmitted by the practitioner or, in the case of a prescription drug order to be transmitted via facsimile, by the practitioner or the practitioner's agent under supervision of the practitioner, to the pharmacy of the patient's choice with no intervening person or intermediary having access to the prescription drug order. For purposes of this paragraph, "intervening person or intermediary" shall not include a person who electronically formats or reconfigures data or information for purposes of integrating into and between computer or facsimile systems of practitioners and pharmacists;

(2) Prescription drug orders transmitted by facsimile or computer shall include:

(A) In the case of a prescription drug order for a dangerous drug, the complete name and address of the practitioner;

(B) In the case of a prescription drug order for a controlled substance, the complete name, address, and DEA registration number of the practitioner;

(C) The telephone number of the practitioner for verbal confirmation;

(D) The name and address of the patient;

(E) The time and date of the transmission;

(F) The full name of the person transmitting the order; and

(G) The signature of the practitioner in a manner as defined in regulations promulgated by the board or, in the case of a controlled substances prescription, in accordance with 21 C.F.R. 1301.22;

(3) An electronically transmitted, issued, or produced prescription drug order which meets the requirements of this Code section shall be deemed the original order;

(4) The pharmacist shall exercise professional judgment regarding the accuracy and authenticity of any electronically transmitted, issued, or produced prescription drug order consistent with federal and state laws and rules and regulations adopted pursuant to the same;

(5) An electronically encrypted, issued, or produced prescription drug order transmitted from a practitioner to a pharmacist shall be considered a highly confidential transaction and the said transmission, issuance, or production shall not be compromised by unauthorized interventions, control, change, altering, manipulation, or accessing patient record information by any other person or party in any manner whatsoever between the time after the practitioner has electronically transmitted, issued, or produced a prescription drug order and such order has been received by the pharmacy of the patient's choice. For purposes of this paragraph, "unauthorized interventions, control, change, altering, manipulation, or accessing patient record information" shall not include electronic formatting or reconfiguring of data or information for purposes of integrating into and between computer or facsimile systems of practitioners and pharmacists;

(6) Any pharmacist that transmits, receives, or maintains any prescription or prescription refill either orally, in writing, or electronically shall ensure the security, integrity, and confidentiality of the prescription and any information contained therein; and

(7)(A) The board shall promulgate rules and regulations under this Code section for institutional settings such as hospital pharmacies, nursing home pharmacies, clinic pharmacies, or pharmacies owned or operated directly by health maintenance organizations.

(B) The rules established pursuant to subparagraph (A) of this paragraph shall specifically authorize hospital pharmacies to use remote order entry when:

(i) The licensed pharmacist is not physically present in the hospital, the hospital pharmacy is closed, and a licensed pharmacist will be physically present in the hospital pharmacy within 16 hours; or

(ii) When at least one licensed pharmacist is physically present in the hospital pharmacy and at least one other licensed pharmacist is practicing pharmacy in the hospital but not physically present in the hospital pharmacy.

(C) Before a hospital may engage in remote order entry as provided in this paragraph, the director of pharmacy of the hospital shall submit to the board written policies and procedures for the use of remote order entry. The required policies and procedures to be submitted to the board shall be in accordance with the American Society of Health-System Pharmacists and shall contain provisions addressing quality assurance and safety, mechanisms to clarify medication orders, processes for reporting medication errors, documentation and record keeping, secure electronic access to the hospital pharmacy's patient information system and to other electronic systems that the on-site pharmacist has access to, access to hospital policies and procedures, confidentiality and security, and mechanisms for real-time communication with prescribers, nurses, and other care givers responsible for the patient's health care.

(D) If the board concludes that the hospital's actual use of remote order entry does not comply with this paragraph or the rules adopted pursuant to this chapter, it may issue a cease and desist order after notice and hearing.

(d) (Effective January 1, 2013. See note.) Information contained in the patient medication record or profile shall be considered confidential information as defined in this title. Confidential information may be released to the patient or the patient's authorized representative, the prescriber or other licensed health care practitioners then caring for the patient, another licensed pharmacist, the board or its representative, or any other person duly authorized to receive such information. In accordance with Code Section 24-12-1, confidential information may be released to others only on the written release of the patient, court order, or subpoena.

(e) Except as authorized under subsection (j) of this Code section, a prescription may not be refilled without authorization. When refills are dispensed pursuant to authorization contained on the original prescription or when no refills are authorized on the original prescription but refills are subsequently authorized by the practitioner, the refill authorization shall be recorded on the original prescription document and the record of any refill made shall be maintained on the back of the original prescription document or on some other uniformly maintained record and the dispensing pharmacist shall record the date of the refill, the quantity of the drug dispensed, and the dispensing pharmacist's initials; provided, however, that an original prescription for a Schedule III, IV, or V controlled substance which contains no refill information may not be authorized to be refilled more than five times or after six months from the date of issuance, whichever occurs first. Authorization for any additional refill of a Schedule III, IV, or V controlled substance

prescription in excess of five refills or after six months from the date of issuance of the prescription shall be treated as a new prescription.

(f) When filling a prescription or refilling a prescription which may be refilled, the pharmacist shall exercise professional judgment in the matter. No prescription shall be filled or refilled with greater frequency than the approximate interval of time that the dosage regimen ordered by the prescriber would indicate, unless extenuating circumstances are documented which would justify a shorter interval of time before the filling or refilling of the prescription.

(g) The pharmacist who fills or refills a prescription shall record the date of dispensing and indicate the identity of the dispensing pharmacist on the prescription document or some other appropriate and uniformly maintained record. If this record is maintained on the original prescription document, the original dispensing and any refills must be recorded on the back of the prescription.

(h) When the patient no longer seeks personal consultation or treatment from the practitioner, the practitioner and patient relationship is terminated. A prescription becomes invalid after the practitioner and patient relationship is terminated which is defined as a reasonable period of time not to exceed six months in which the patient could have established a new practitioner and patient relationship as established by the board through the promulgation of rules and regulations.

(i) All prescription drug orders must bear the signature of the prescribing practitioner as defined in Code Section 16-13-21. Physician assistants must comply with all applicable laws regarding signatures. Further, the nature of such signature must meet the requirements set forth in regulations promulgated by the board. A physically applied signature stamp is not acceptable in lieu of an original signature. Except as otherwise provided for in this subsection, when an oral prescription drug order or the oral authorization for the refilling of a prescription drug order is received which has been transmitted by someone other than the practitioner, the name of the individual making the transmission and the date, time, and location of the origin of the transmission must be recorded on the original prescription drug order or other record by the pharmacist receiving the transmission. No one other than the practitioner or an agent authorized by the practitioner shall transmit such prescriptions in any manner. In institutional settings such as hospital pharmacies, nursing home pharmacies, clinic pharmacies, or pharmacies owned or operated directly by health maintenance organizations, the name of the individual making the transmission is not required to be placed on the order.

(j) A pharmacist licensed by the board may dispense up to a 72 hour supply of a prescribed medication in the event the pharmacist is unable to contact the practitioner to obtain refill authorization, provided that:

(1) The prescription is not for a controlled substance;

(2) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;

(3) The dispensing pharmacist notifies the practitioner or his or her agent of the dispensing within seven working days after the prescription is refilled pursuant to this subsection;

(4) The pharmacist properly records the dispensing as a separate nonrefillable prescription. Said document shall be filed as is required of all other prescription records. This document shall be serially numbered and contain all information required of other prescriptions. In addition it shall contain the number of the prescription from which it was refilled;

(5) The pharmacist shall record on the patient's record and on the new document the circumstances which warrant such dispensing; and

(6) The pharmacist does not employ this provision regularly for the same patient on the same medication.

(k) All out-patient prescription drug orders which are dispensed shall be appropriately labeled in accordance with the rules and regulations promulgated by the board as follows:

(1) Before an out-patient prescription drug is released from the dispensing area, the prescription drug shall bear a label containing the name and address of the pharmacy, a prescription number, the name of the prescriber, the name of the patient, directions for taking the medication, the date of the filling or refilling of the prescription, the initials or identifying code of the dispensing pharmacist, and any other information which is necessary, required, or, in the pharmacist's professional judgment, appropriate; and

(2) The pharmacist who fills an out-patient prescription drug order shall indicate the identity of the dispensing pharmacist on the label of the prescription drug. Identification may be made by placing initials on the label of the dispensed drug. The label shall be affixed to the outside of the container of the dispensed drug by means of adhesive or tape or any other means which will assure that the label remains attached to the container.

(l) A Schedule II controlled substance prescription drug order in written form signed in indelible ink by the practitioner may be accepted by a pharmacist and the Schedule II controlled substance may be dispensed by such pharmacist. Other forms of Schedule II controlled substance prescription drug orders may be accepted by a pharmacist

and the Schedule II controlled substance may be dispensed by such pharmacist in accordance with regulations promulgated by the board and in accordance with DEA regulations found in 21 C.F.R. 1306. A pharmacist shall require a person picking up a Schedule II controlled substance prescription to present a government issued photo identification document or such other form of identification which documents legibly the full name of the person taking possession of the Schedule II controlled substance subject to the rules adopted by the board.

(m) No licensee nor any other entity shall be permitted to provide facsimile machines or equipment, computer software, technology, hardware, or supplies related to the electronic transmission of prescription drug orders to any practitioner which restricts such practitioner from issuing prescription drug orders for certain prescription drugs or restricts a patient from choosing the retail pharmacy to which an electronic prescription drug order may be transmitted.

(n) Institutions including, but not limited to, hospitals, long-term care facilities, and inpatient hospice facilities which utilize electronic medical record systems that meet the information requirements for prescription drug orders for patients pursuant to this Code section shall be considered to be in compliance with this Code section.

(o) Nothing in this Code section shall be construed to prohibit any insurance company, hospital or medical service plan, health care provider network, health maintenance organization, health care plan, employer, or other similar entity providing health insurance from offering incentives to pharmacies, pharmacists, and practitioners that accept or utilize electronic data prescription drug orders.

(p) Pharmacists dispensing prescriptions pursuant to a remote automated medication system in accordance with the rules and regulations adopted by the State Board of Pharmacy pursuant to paragraph (12.1) of subsection (a) of Code Section 26-4-28 shall be considered in compliance with this Code section. (Code 1981, § 26-4-80, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 2004, p. 738, §§ 4, 5; Ga. L. 2006, p. 444, § 2/HB 246; Ga. L. 2009, p. 859, § 3/HB 509; Ga. L. 2011, p. 99, § 39/HB 24; Ga. L. 2011, p. 308, § 7/HB 457; Ga. L. 2011, p. 659, § 4/SB 36; Ga. L. 2012, p. 1092, § 1B/SB 346.)

The 2011 amendment, effective January 1, 2013, substituted "Code Section 24-12-1" for "Code Section 24-9-40" in the middle of the last sentence of subsection (d). See editor's note for applicability.

The 2012 amendment, effective July 1, 2012, designated the existing provisions of paragraph (c)(7) as subparagraph (c)(7)(A); deleted "which may provide specific exceptions" following "rules and regulations" in subparagraph (c)(7)(A); and added subparagraphs (c)(7)(B) through (c)(7)(D).

Editor's notes. — Code Section 26-4-80 is set out twice in this Code. The first version is effective until January 1, 2013, and the second version becomes effective on that date.

Ga. L. 2011, p. 99, § 101, not codified by the General Assembly, provides that this

Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 269 (2011).

26-4-80.1. Use of security paper for hard copy prescription drug orders.

(a) Effective October 1, 2011, every hard copy prescription drug order for any Schedule II controlled substance written in this state by a practitioner must be written on security paper.

(b) A pharmacist shall not fill a hard copy prescription drug order for any Schedule II controlled substance from a practitioner unless it is written on security paper, except that a pharmacist may provide emergency supplies in accordance with the board and other insurance contract requirements.

(c) If a hard copy of an electronic data prescription drug order for any Schedule II controlled substance is given directly to the patient, the manually signed hard copy prescription drug order must be on approved security paper that meets the requirements of paragraph (38.5) of Code Section 26-4-5.

(d) Practitioners shall employ reasonable safeguards to assure against theft or unauthorized use of security paper and shall promptly report to appropriate authorities any theft or unauthorized use.

(e) All vendors shall have their security paper approved by the board prior to marketing or sale in this state.

(f) The board shall create a seal of approval that confirms that security paper contains all three industry recognized characteristics required by paragraph (38.5) of Code Section 26-4-5. The seal shall be affixed to all security paper used in this state.

(g) The board may adopt rules necessary for the administration of this Code section.

(h) The security paper requirements in this Code section shall not apply to:

(1) Prescriptions that are transmitted to the pharmacy by telephone, facsimile, or electronic means; or

(2) Prescriptions written for inpatients of a hospital, outpatients of a hospital, residents of a nursing home, inpatients or residents of a mental health facility, or individuals incarcerated in a local, state, or federal correctional facility when the health care practitioner authorized to write prescriptions writes the order into the patient's medical

or clinical record, the order is given directly to the pharmacy, and the patient never has the opportunity to handle the written order. (Code 1981, § 26-4-80.1, enacted by Ga. L. 2011, p. 659, § 5/SB 36.)

Effective date. — This Code section became effective July 1, 2011.

Law reviews. — For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 269 (2011).

26-4-81. Substitution of generic drugs for brand name drugs.

(a) In accordance with this Code section, a pharmacist may substitute a drug with the same generic name in the same strength, quantity, dose, and dosage form as the prescribed brand name drug product which is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent.

(b) If a practitioner of the healing arts prescribes a drug by its generic name, the pharmacist shall dispense the lowest retail priced drug product which is in stock and which is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent.

(c) Substitutions as provided for in subsections (a) and (b) of this Code section are authorized for the express purpose of making available to the consumer the lowest retail priced drug product which is in stock and which is, in the pharmacist's reasonable professional opinion, both therapeutically equivalent and pharmaceutically equivalent.

(d)(1) Whenever a substitution is made, the pharmacist shall record on the original prescription the fact that there has been a substitution and the identity of the dispensed drug product and its manufacturer. Such prescription shall be made available for inspection by the board or its representative in accordance with the rules of the board.

(2) If a pharmacist substitutes a generic drug product for a brand name prescribed drug product when dispensing a prescribed medication, the brand name and the generic name of the drug product, with an explanation of "generic for (insert name of brand name prescribed drug product)" or similar language to indicate substitution has occurred, must appear on the prescription label and be affixed to the container or an auxiliary label, unless the prescribing practitioner indicated that the name of the drug may not appear upon the prescription label; provided, however, that this paragraph shall not apply to medication dispensed for in-patient hospital services or to medications in specialty packaging for dosing purposes as defined by the board.

(e) The substitution of any drug by a registered pharmacist pursuant to this Code section does not constitute the practice of medicine.

(f) A patient for whom a prescription drug order is intended may instruct a pharmacist not to substitute a generic name drug in lieu of a brand name drug.

(g) A practitioner of the healing arts may instruct the pharmacist not to substitute a generic name drug in lieu of a brand name drug by including the words "brand necessary" in the body of the prescription. When a prescription is a hard copy prescription drug order, such indication of brand necessary must be in the practitioner's own handwriting and shall not be printed, applied by rubber stamp, or any such similar means. When the prescription is an electronic prescription drug order, the words "brand necessary" are not required to be in the practitioner's own handwriting and may be included on the prescription in any manner or by any method. When a practitioner has designated "brand necessary" on an electronic prescription drug order, a generic drug shall not be substituted without the practitioner's express consent, which shall be documented by the pharmacist on the prescription and by the practitioner in the patient's medical record. (Code 1981, § 26-4-81, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2004, p. 738, § 6; Ga. L. 2009, p. 8, § 26/SB 46; Ga. L. 2010, p. 266, § 5/SB 195; Ga. L. 2010, p. 554, § 1/HB 194.)

The 2004 amendment, effective July 1, 2004, substituted "When a prescription is a hard copy prescription drug order, such" for "Such" at the beginning of the second sentence in subsection (g).

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, deleted former subsection (h), which was a duplicate of subsection (e).

The 2010 amendments. — The first 2010 amendment, effective May 20, 2010, added the last two sentences of subsection (g). The second 2010 amendment, effective October 1, 2010, designated the existing provisions of subsection (d) as paragraph (d)(1) and added paragraph (d)(2).

Editor's notes. — Ga. L. 2004, p. 738, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Patient Safe Prescription Drug Act.'"

26-4-82. Duties requiring professional judgment; responsibilities of licensed pharmacist.

(a) In dispensing drugs, no individual other than a licensed pharmacist shall perform or conduct those duties or functions which require professional judgment. It shall be the responsibility of the supervising pharmacist to ensure that no other employee of the pharmacy, including pharmacy technicians, performs or conducts those duties or functions which require professional judgment.

(b) For all prescriptions, it shall be the responsibility of the pharmacist on duty at a facility to ensure that only a pharmacist or a pharmacy intern under the direct supervision of a pharmacist provides professional consultation and counseling with patients or other licensed health care professionals, and that only a pharmacist or a pharmacy

intern under the direct supervision of a pharmacist accepts initial telephoned prescription orders or provides information in any manner relative to prescriptions or prescription drugs.

(c) In the dispensing of all prescription drug orders:

(1) The pharmacist shall be responsible for all activities of the pharmacy technician in the preparation of the drug for delivery to the patient;

(2) The pharmacist shall be present and personally supervising the activities of the pharmacy technician at all times;

(3) When electronic systems are employed within the pharmacy, pharmacy technicians may enter information into the system and prepare labels; provided, however, that it shall be the responsibility of the pharmacist to verify the accuracy of the information entered and the label produced in conjunction with the prescription drug order;

(4) When a prescription drug order is presented for refilling, it shall be the responsibility of the pharmacist to review all appropriate information and make the determination as to whether to refill the prescription drug order; and

(5) Pharmacy technicians in the dispensing area shall be easily identifiable.

(d) The board of pharmacy shall promulgate rules and regulations regarding the activities and utilization of pharmacy technicians in pharmacies, including the establishment of a registry as required in paragraph (7) of subsection (a) of Code Section 26-4-28; provided, however, that the pharmacist to pharmacy technician ratio shall not exceed one pharmacist providing direct supervision of three pharmacy technicians. The board may consider and approve an application to increase the ratio in a pharmacy located in a licensed hospital. Such application must be made in writing and must be submitted to the board by the pharmacist in charge of a specific hospital pharmacy in this state. One of the three technicians must:

(1) Have successfully passed a certification program approved by the board of pharmacy;

(2) Have successfully passed an employer's training and assessment program which has been approved by the board of pharmacy; or

(3) Have been certified by either the Pharmacy Technician Certification Board or any other nationally recognized certifying body approved by the board of pharmacy.

(e) In addition to the utilization of pharmacy technicians, a pharmacist may be assisted by and directly supervise one pharmacy intern and

one pharmacy extern. (Code 1981, § 26-4-82, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2002, p. 1492, § 1; Ga. L. 2007, p. 229, § 2/HB 330.)

The 2007 amendment, effective July 1, 2010, inserted ", including the establishment of a registry as required in paragraph (7) of subsection (a) of Code Section 26-4-28" in the middle of the first sentence of subsection (d).

Editor's notes. — Ga. L. 2007, p. 229, § 5, not codified by the General Assembly, provides that the 2007 amendment becomes effective only if funds are specifically appropriated for purposes of the Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2010 session of the General Assembly and thus, the 2007 amendment became effective July 1, 2010.

26-4-85. Patient counseling; optimizing drug therapy.

(a) The board of pharmacy may refuse to renew or may suspend, revoke, or restrict the licenses of or fine any person or pharmacy pursuant to the procedures set forth in this Code section upon the failure to offer to counsel patients.

(b) Upon receipt of a prescription drug order and following a review of the patient's record, the pharmacist or the pharmacy intern operating under the direct supervision of the pharmacist shall personally offer to discuss matters which will enhance or optimize drug therapy with each patient or caregiver of such a patient. Such discussion shall be in person, whenever practicable, or by telephone and shall include appropriate elements of patient counseling, based on the professional judgment of the pharmacist. Such elements may include but are not limited to the following:

(1) The name and description of the drug;

(2) The dosage form, dose, route of administration and duration of therapy;

(3) The intended use of the drug and expected action or result;

(4) Any special directions or precautions for preparation, administration, or use by the patient;

(5) Common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if such side effect, adverse effect, interaction, or therapeutic contraindication occurs;

(6) Techniques for self-monitoring of drug therapy;

(7) The proper storage of the drug;

(8) Prescription refill information;

(9) The action to be taken in the event of a missed dose; and

(10) The comments of the pharmacist relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

(c) Additional forms of patient information may be used to supplement verbal patient counseling when appropriate or available.

(d) Patient counseling, as described in this Code section, shall not be required for:

(1) In-patients of a hospital or institution where other health care professionals are authorized to administer the drug or drugs;

(2) Inmates of corrections institutions where pharmacy services are provided by the Department of Corrections or by a county or municipal political subdivision either directly or by a subcontractor of the above; or

(3) Patients receiving drugs from the Department of Public Health; provided, however, that pharmacists who provide drugs to patients in accordance with Code Section 43-34-23 shall include in all dispensing procedures a written process whereby the patient or the caregiver of the patient is provided with the information required under this Code section.

(e) A pharmacist shall not be required to counsel a patient or the caregiver of the patient when the patient or the caregiver of the patient refuses such consultation or counseling. (Code 1981, § 26-4-85, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2007, p. 229, § 3/HB 330; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 859, § 7/HB 509; Ga. L. 2011, p. 705, § 5-7/HB 214.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" near the beginning of paragraph (d)(3). The second 2009 amendment, effective July 1, 2009, substituted "Code Section 43-34-23" for "Code Section 43-34-26.1" near the middle of paragraph (d)(3).

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health Division of Public Health" near the beginning of paragraph (d)(3).

Editor's notes. — Ga. L. 2007, p. 229, § 3, reenacted this Code section without change. Ga. L. 2007, p. 229, § 5, not codified by the General Assembly, provides that the 2007 Act which reenacted this Code section without change becomes effective only if funds are specifically appropriated for purposes of the Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2010 session of the General Assembly. However, since the 2007 Act made no changes to this particular Code section in any event, whether that Act was funded or not had no effect on this Code section.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

26-4-89. Selling drugs in vending machines prohibited; remote automated medication system excluded.

(a) Any person who shall sell or dispense drugs by the use of vending machines shall be guilty of a misdemeanor.

(b) A remote automated medication system shall not be considered a vending machine for purposes of this Code section. (Code 1981, § 26-4-89, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 2011, p. 308, § 8/HB 457.)

The 2011 amendment, effective May 11, 2011, designated the existing provisions of this Code section as subsection (a); and added subsection (b).

ARTICLE 6

PHARMACIES

26-4-110. Pharmacy licenses — Classifications; applications; fees; investigations; prescription department requirements.

(a) All facilities engaged in the manufacture, production, sale, or distribution of drugs or devices utilized in the practice of pharmacy or pharmacies where drugs or devices are dispensed or pharmacy care is provided shall be licensed by the board and shall biennially renew their license with the board. Where operations are conducted at more than one location, each such location shall be licensed by the board.

(b) The board may by rule determine the licensure classifications of all persons and facilities licensed as a pharmacy under this article and establish minimum standards for such persons and facilities.

(c)(1) The board shall establish by rule, under the powers granted to it under Article 2 of this chapter and as may be required from time to time under federal law the criteria which each person must meet to qualify for licensure as a pharmacy in each classification. The board may issue licenses with varying restrictions to such persons where the board deems it necessary.

(2) All applications for a new license shall be accompanied by a fee. Upon the filing of an application for a license, the board may cause a thorough investigation of the applicant to be made, and, if satisfied that the applicant possesses the necessary qualifications and that the pharmacy will be conducted in accordance with law, shall issue a license.

(d) Each pharmacy shall have a pharmacist in charge. Whenever an applicable rule requires or prohibits action by a pharmacy, responsibil-

ity shall be that of the owner and the pharmacist in charge of the pharmacy, whether the owner is a sole proprietor, partnership, association, corporation, or otherwise. The pharmacist in charge shall be responsible for notifying the board in accordance with its rules and regulations of updated information regarding the registration of pharmacy technicians.

(e) The board may enter into agreements with other states or with third parties for the purpose of exchanging information concerning licensure of any pharmacy.

(f) The board may deny or refuse to renew a pharmacy license if it determines that the granting or renewing of such license would not be in the public interest.

(g) It shall be unlawful for any person in connection with any place of business or in any manner to take, use, or exhibit the title "drug store," "pharmacy," "apothecary," or any combination of such titles or any title or designation of like import or other term to take the place of such title, unless such place of business is licensed as a pharmacy under the provisions of this chapter, has submitted a written request to the board and received a waiver from this subsection, or meets the provisions of any rule or regulation regarding use of such titles and promulgated by the board.

(h) Every pharmacy licensed under this chapter shall have a prescription department which shall be kept clean and free of all materials not currently in use in the practice of compounding or preparing a medication for dispensing. The space behind the prescription counter shall be kept free of obstruction at all times.

(i) During hours of operation, every pharmacy licensed pursuant to this chapter shall have a prescription department under the personal supervision of a duly licensed pharmacist who shall have personal supervision of not more than one pharmacy at the same time, provided that nothing in this chapter shall be construed to prohibit any pharmacist from having personal supervision of a pharmacy located in a hospital, nursing home, college of pharmacy, or a pharmacy owned and operated directly by a health maintenance organization. Every pharmacy licensed under this chapter, except those located within and owned and operated by a duly licensed and accredited hospital, nursing home, or college of pharmacy or a pharmacy complying with subsection (j) of this Code section, shall have a prescription department open for business at all times that the business establishment is open to the public, except that during temporary absences of any licensed pharmacist not to exceed three hours daily or more than one and one-half hours at any one time the prescription department shall be closed and no prescription shall be filled or dispensed.

(j) If a pharmacy is located in a general merchandising establishment, or if the owner of the pharmacy so chooses, a portion of the space of the business establishment may be set aside and permanently enclosed or otherwise secured. Only that permanently enclosed or otherwise secured area shall be subject to the provisions of this chapter and shall be registered as a pharmacy. In such case, the area to be registered as a pharmacy shall be permanently enclosed with a partition built from the floor to the ceiling or otherwise secured in a manner as provided by the board through rules and regulations. (Code 1981, § 26-4-110, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 1999, p. 757, § 1; Ga. L. 2007, p. 229, § 4/HB 330.)

The 2007 amendment, effective July 1, 2010, added the last sentence in subsection (d).

Editor's notes. — Ga. L. 2007, p. 229, § 5, not codified by the General Assembly, provides that the 2007 amendment becomes effective only if funds are specifically appropriated for purposes of this Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2010 session of the General Assembly and thus, the 2007 amendment became effective July 1, 2010.

26-4-111. Pharmacy licenses — Minimum standards; transferability.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 8C Am. Jur. Pleading and Practice Forms, Drugs, Narcotics, and Poisons, § 2.

26-4-116. Emergency service providers; contracts with issuing pharmacy; record keeping; inspections.

(a) Dangerous drugs and controlled substances as defined under Chapter 13 of Title 16 shall only be issued to the medical director of an emergency service provider from a pharmacy licensed in this state only in accordance with the provisions of this Code section.

(b) The medical director of an emergency service provider and the issuing pharmacy must have a signed contract or agreement designating the issuing pharmacy as the provider of drugs and consultant services and a copy must be filed with the state board and the Department of Public Health prior to any drugs being issued. The medical director of an emergency service provider may only have one contractual relationship with one pharmacy per county serviced by such emergency service provider.

(c) A manual of policies and procedures for the handling, storage, labeling, and record keeping of all drugs must be written, approved, and signed by the medical director of an emergency service provider and the pharmacist in charge of the issuing pharmacy. The manual shall

contain procedures for the safe and effective use of drugs from acquisition to final disposition.

(d) A written record of all drugs issued to the medical director of an emergency service provider must be maintained by the issuing pharmacy and emergency service provider. Agents of the Georgia Drugs and Narcotics Agency may review all records to determine the accuracy and proper accountability for the use of all drugs.

(e) To provide for the proper control and accountability of drugs, a written record of all drugs used by such emergency service provider shall be provided to the issuing pharmacy within 72 hours of use.

(f) A pharmacist from the contracting issuing pharmacy shall physically inspect the drugs of such emergency service provider to determine compliance with appropriate policies and procedures for the handling, storage, labeling, and record keeping of all drugs not less than annually and maintain records of such inspection for a period of not less than two years. Such an inspection shall, at a minimum, verify that:

(1) Drugs are properly stored, especially those requiring special storage conditions;

(2) Drugs are properly accounted for by personnel of such emergency service provider;

(3) Proper security measures to prohibit unauthorized access to the drugs are implemented; and

(4) All policies and procedures are followed and enforced.

(g) All outdated, expired, unused, or unusable drugs shall be returned to the issuing pharmacy for proper disposition in a manner acceptable to the board. (Code 1981, § 26-4-116, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 1999, p. 81, § 26; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in the first sentence of subsection (b).

The 2011 amendment, effective July 1, 2011, substituted "Department of Public Health" for "Department of Community Health" in the first sentence of subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

26-4-118. Pharmacy Audit Bill of Rights; recoupment of disputed funds; appeals process for unfavorable reports; final audit report; investigative audits based on criminal offenses.

(a) This Code section shall be known and may be cited as "The Pharmacy Audit Bill of Rights."

(b) Notwithstanding any other law, when an audit of the records of a pharmacy is conducted by a managed care company, insurance company, third-party payor, the Department of Community Health under Article 7 of Chapter 4 of Title 49, or any entity that represents such companies, groups, or department, it shall be conducted in accordance with the following bill of rights:

(1) The entity conducting the initial on-site audit must give the pharmacy notice at least one week prior to conducting the initial on-site audit for each audit cycle;

(2) Any audit which involves clinical or professional judgment must be conducted by or in consultation with a pharmacist;

(3) Any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error, regarding a required document or record may not in and of itself constitute fraud; however, such claims may be subject to recoupment. No such claim shall be subject to criminal penalties without proof of intent to commit fraud;

(4) A pharmacy may use the records of a hospital, physician, or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug;

(5) A finding of an overpayment or underpayment may be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs; however, recoupment of claims must be based on the actual overpayment or underpayment unless the projection for overpayment or underpayment is part of a settlement as agreed to by the pharmacy;

(6) Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(7) A pharmacy shall be allowed at least 30 days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;

(8) The period covered by an audit may not exceed two years from the date the claim was submitted to or adjudicated by a managed care company, insurance company, third-party payor, the Department of Community Health under Article 7 of Chapter 4 of Title 49, or any entity that represents such companies, groups, or department;

(9) An audit may not be initiated or scheduled during the first seven calendar days of any month due to the high volume of

prescriptions filled during that time unless otherwise consented to by the pharmacy;

(10) The preliminary audit report must be delivered to the pharmacy within 120 days after conclusion of the audit. A final audit report shall be delivered to the pharmacy within six months after receipt of the preliminary audit report or final appeal, as provided for in subsection (c) of this Code section, whichever is later; and

(11) The audit criteria set forth in this subsection shall apply only to audits of claims submitted for payment after July 1, 2006. Notwithstanding any other provision in this subsection, the agency conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.

(c) Recoupments of any disputed funds shall only occur after final internal disposition of the audit, including the appeals process as set forth in subsection (d) of this Code section.

(d) Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity. If, following the appeal, the entity finds that an unfavorable audit report or any portion thereof is unsubstantiated, the entity shall dismiss the audit report or said portion without the necessity of any further proceedings.

(e) Each entity conducting an audit shall provide a copy of the final audit report, after completion of any review process, to the plan sponsor.

(f) This Code section shall not apply to any investigative audit which involves fraud, willful misrepresentation, or abuse including without limitation investigative audits under Article 7 of Chapter 4 of Title 49, Code Section 33-1-16, or any other statutory provision which authorizes investigations relating to insurance fraud. (Code 1981, § 26-4-118, enacted by Ga. L. 2006, p. 198, § 1/HB 1371; Ga. L. 2009, p. 8, § 26/SB 46.)

Effective date. — This Code section became effective April 19, 2006.

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (b)(10).

ARTICLE 7

PRACTITIONERS OF THE HEALING ARTS

26-4-130. Dispensing drugs; compliance with labeling and packaging requirements; records available for inspection by board; renewal of licenses.

(a) For purposes of this Code section, the term:

(1) "Drugs" means drugs as defined in this chapter and controlled substances as defined in Article 2 of Chapter 13 of Title 16.

(2) "Practitioner" or "practitioner of the healing arts" means, notwithstanding Code Section 26-4-5, a person licensed as a dentist, physician, podiatrist, or veterinarian under Chapter 11, 34, 35, or 50, respectively, of Title 43.

(b) The other provisions of this chapter and Article 3 of Chapter 13 of Title 16 shall not apply to practitioners of the healing arts prescribing or compounding their own prescriptions and dispensing drugs except as provided in this Code section. Nor shall such provisions prohibit the administration of drugs by a practitioner of the healing arts or any person under the supervision of such practitioner or by the direction of such practitioner except as provided in this Code section. Any term used in this subsection and defined in Code Section 43-34-23 shall have the meaning provided for such term in Code Section 43-34-23. The other provisions of this chapter and Articles 2 and 3 of Chapter 13 of Title 16 shall not apply to persons authorized by Code Section 43-34-23 to order, dispense, or administer drugs when such persons order, dispense, or administer those drugs in conformity with Code Section 43-34-23. When a person dispenses drugs pursuant to the authority delegated to that person under the provisions of Code Section 43-34-23, with regard to the drugs so dispensed, that person shall comply with the requirements placed upon practitioners by subsections (c) and (d) of this Code section.

(c) All practitioners who dispense drugs shall comply with all record-keeping, labeling, packaging, and storage requirements imposed upon pharmacists and pharmacies with regard to such drugs pursuant to this chapter and Chapter 13 of Title 16.

(d) All practitioners who dispense drugs shall make all records required to be kept under subsection (c) of this Code section available for inspection by the board.

(e) Any practitioner who desires to dispense drugs shall notify, at the time of the renewal of that practitioner's license to practice, that practitioner's respective licensing board of that practitioner's intention to dispense drugs. That licensing board shall notify the board regarding each practitioner concerning whom that board has received a notification of intention to dispense drugs. The licensing board's notification shall include the following information:

(1) The name and address of the practitioner;

(2) The state professional license number of the practitioner;

(3) The practitioner's Drug Enforcement Administration license number; and

(4) The name and address of the office or facility from which such drugs shall be dispensed and the address where all records pertaining to such drugs shall be maintained.

(f) The board shall have the authority to promulgate rules and regulations governing the dispensing of drugs pursuant to this Code section.

(g) This Code section shall not apply to practitioners who provide to their patients at no cost manufacturer's samples of drugs. (Code 1981, § 26-4-130, enacted by Ga. L. 1998, p. 686, § 1; Ga. L. 2000, p. 1706, § 24; Ga. L. 2009, p. 859, § 8/HB 509.)

The 2009 amendment, effective July 1, 2009, substituted "Code Section 43-34-23" for "Code Section 43-34-26.1" throughout subsection (b).

ARTICLE 10

NUCLEAR PHARMACY LAW

26-4-172. License requirements generally.

(a) All persons, firms, pharmacies, or corporations which receive, possess, transfer, or manufacture for sale or resale radiopharmaceuticals shall be licensed in accordance with the provisions of this article. No person may receive, acquire, possess, compound, or dispense any radiopharmaceutical except in accordance with the provisions of this article and the conditions of rules and regulations promulgated by the Board of Natural Resources for radioactive materials and administered by the department. The requirements of this article are in addition to, and not in substitution of, other applicable statutes and regulations administered by the State Board of Pharmacy or the department.

(b) Nothing in this article shall be construed as requiring a licensed physician to obtain a separate license as a nuclear pharmacist, when his or her use of radiopharmaceuticals is limited to the diagnosis and treatment of his or her own patients.

(c) Nothing in this article shall be construed so as to require a licensed clinical laboratory, which is licensed by the Department of Community Health to handle radioactive materials, to obtain the services of a nuclear pharmacist, or to have a nuclear pharmacy license, unless the laboratory is engaged in the commercial sale or resale of radiopharmaceuticals.

(d) Nothing in this article shall be construed to require a department of nuclear medicine which is located in a hospital of 250 beds or less, which has a board certified radiologist in the practice of nuclear

medicine, and which is licensed by the department to handle radioactive materials to obtain the services of a nuclear pharmacist or to have a nuclear pharmacy license. (Code 1981, § 26-4-172, enacted by Ga. L. 1999, p. 277, § 10; Ga. L. 2009, p. 453, § 1-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in subsection (c).

ARTICLE 11

UTILIZATION OF UNUSED PRESCRIPTION DRUGS

Effective date. — This article became effective July 1, 2006.

Law reviews. — For article on 2006 enactment of this article, see 23 Ga. St. U. L. Rev. 197 (2006).

26-4-190. Short title.

This article shall be known and may be cited as the "Utilization of Unused Prescription Drugs Act." (Code 1981, § 26-4-190, enacted by Ga. L. 2006, p. 152, § 1/HB 1178.)

26-4-191. Definitions.

As used in this article, the term:

(1) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Code Sections 16-13-25 through 16-13-29 and Schedules I through V of 21 C.F.R. Part 1308.

(2) "Health care facility" means an institution which is licensed as a nursing home, intermediate care home, assisted living community, personal care home, home health agency, or hospice pursuant to Chapter 7 of Title 31.

(3) "Medically indigent person" means:

(A) A person who is Medicaid eligible under the laws of this state; or

(B) A person:

(i) Who is without health insurance; or

(ii) Who has health insurance that does not cover the injury, illness, or condition for which treatment is sought; and

whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget. (Code 1981, § 26-4-191, enacted by Ga. L. 2006, p. 152, § 1/HB 1178; Ga. L. 2011, p. 227, § 8/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted "assisted living community," in paragraph (2).

26-4-192. State-wide program for distribution of unused prescription drugs for benefit of medically indigent persons; pilot program; rules and regulations.

(a) The Georgia State Board of Pharmacy, the Department of Public Health, and the Department of Community Health shall jointly develop and implement a state-wide program consistent with public health and safety standards through which unused prescription drugs, other than prescription drugs defined as controlled substances, may be transferred from health care facilities to pharmacies designated or approved by the Department of Public Health for the purpose of distributing such drugs to residents of this state who are medically indigent persons.

(b) The Georgia State Board of Pharmacy, the Department of Public Health, and the Department of Community Health shall be authorized to develop and implement a pilot program to determine the safest and most beneficial manner of implementing the program prior to the state-wide implementation of the program required in subsection (a) of this Code section.

(c) The Georgia State Board of Pharmacy, in consultation with the Department of Public Health and the Department of Community Health, shall develop and promulgate rules and regulations to establish procedures necessary to implement the program and pilot program, if applicable, provided for in this Code section. The rules and regulations shall provide, at a minimum:

(1) For an inclusionary formulary for the prescription drugs to be distributed pursuant to the program;

(2) For the protection of the privacy of the individual for whom a prescription drug was originally prescribed;

(3) For the integrity and safe storage and safe transfer of the prescription drugs, which may include, but shall not be limited to, limiting the drugs made available through the program to those that were originally dispensed by unit dose or an individually sealed dose and that remain in intact packaging; provided, however, that the rules and regulations shall authorize the use of any remaining prescription drugs;

(4) For the tracking of and accountability for the prescription drugs; and

(5) For other matters necessary for the implementation of the program. (Code 1981, § 26-4-192, enacted by Ga. L. 2006, p. 152,

§ 1/HB 1178; Ga. L. 2009, p. 453, § 1-21/HB 228; Ga. L. 2011, p. 705, § 5-8/HB 214.)

The 2009 amendment, effective July 1, 2009, deleted ", the Department of Human Resources," following "Georgia State Board of Pharmacy" near the beginning of subsections (a) and (b); in subsection (a), substituted "Department of Community Health" for "Department of Human Resources" near the end; and, in the first sentence of the introductory language of subsection (c), deleted "the Department of Human Resources and" following "in consultation with".

The 2011 amendment, effective July 1, 2011, inserted ", the Department of Public Health, " in subsections (a) and (b); substituted "Department of Public Health" for "Department of Community Health" near the end of subsection (a); inserted "the Department of Public Health and" near the beginning of the first sentence of subsection (c); and deleted subsection (d), which read: "The state-wide program required by this Code section shall be implemented no later than January 1, 2007, unless a pilot program is implemented pursuant to subsection (b) of this Code section, in which case state-wide implementation shall occur no later than July 1, 2008."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

26-4-193. Donated drugs for dispensation.

In accordance with the rules and regulations promulgated pursuant to Code Section 26-4-192, the resident of a health care facility, or the representative or guardian of a resident, may donate unused prescription drugs, other than prescription drugs defined as controlled substances, for dispensation to medically indigent persons. (Code 1981, § 26-4-193, enacted by Ga. L. 2006, p. 152, § 1/HB 1178.)

26-4-194. Immunity from liability for those dispensing donated drugs.

(a) Physicians, pharmacists, other health care professionals when acting within the scope of practice of their respective licenses, and health care facilities shall not be subject to liability for transferring or receiving unused prescription drugs pursuant to this article and in good faith compliance with the rules and regulations promulgated pursuant to Code Section 26-4-192.

(b) Pharmacists and pharmacies shall not be subject to liability for dispensing unused prescription drugs pursuant to this article when such services are provided without reimbursement and when performed within the scope of their practice and in good faith compliance with the rules and regulations promulgated pursuant to Code Section 26-4-192. For purposes of this subsection, a restocking fee paid to a pharmacy pursuant to Code Section 49-4-152.5 shall not be considered reimbursement.

(c) Nothing in this Code section shall be construed as affecting, modifying, or eliminating the liability of a manufacturer of prescription

drugs or its employees or agents under any legal claim, including but not limited to product liability claims. Drug manufacturers shall not be subject to liability for any acts or omissions of any physician, pharmacist, other health care professional, health care facility, or pharmacy providing services pursuant to this article.

(d) Drug manufacturers shall not be subject to criminal prosecution or liability in tort or other civil action for injury, death, or loss to person or property for the donation, acceptance, or dispensing of a drug under the program or for the failure to transfer or communicate product or consumer information or the expiration date of a drug donated under the program. (Code 1981, § 26-4-194, enacted by Ga. L. 2006, p. 152, § 1/HB 1178.)

26-4-195. Construction of article.

This article shall be construed in concert with Code Section 49-4-152.3. (Code 1981, § 26-4-195, enacted by Ga. L. 2006, p. 152, § 1/HB 1178.)

ARTICLE 12

PRESCRIPTION MEDICATION INTEGRITY ACT

Delayed effective date. — Ga. L. 2007, p. 463, § 2, provides that this article becomes effective only when funds are specifically appropriated for purposes of this Act in an Appropriations Act making specific reference to that Act. Funds were not appropriated at the 2007, 2008, 2009, 2010, 2011, or 2012 session of the General Assembly.

26-4-200. (For effective date, see note.) Short title.

This article shall be known and may be cited as the "Prescription Medication Integrity Act." (Code 1981, § 26-4-200, enacted by Ga. L. 2007, p. 463, § 2/SB 205.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

26-4-201. (For effective date, see note.) Definitions.

As used in this article, the term:

(1) "Authenticate" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(2) "Authorized distributor of record" means a distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs.

(3) "Board" means the State Board of Pharmacy.

(4) "Broker" has the same meaning as a third party logistics provider.

(5) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership or control.

(6) "Co-licensed pharmaceutical products" means pharmaceutical products:

(A) That have been approved by the federal Food and Drug Administration; and

(B) Concerning which two or more parties have the right to engage in a business activity or occupation concerning the pharmaceutical products.

(7) "Co-licensee" means a party to a co-licensed pharmaceutical product.

(8) "Distribute" means to deliver a drug or device other than by administering or dispensing.

(9) "Drop shipment arrangement" means the physical shipment of a prescription from a manufacturer, that manufacturer's co-licensee, that manufacturer's third-party logistics provider, or that manufacturer's authorized distributor of record directly to a chain pharmacy warehouse, pharmacy buying cooperative warehouse, pharmacy, or other persons authorized under law to dispense or administer prescription drugs but wherein the sale and title for the prescription drug passes between a wholesale drug distributor and the party that directly receives the prescription drug. In order to be considered part of the normal distribution channel and participate in a drop shipment as described in this paragraph, the wholesale drug distributor must be an authorized distributor of record.

(10) "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged, or offered for sale.

(11) "Manufacturer" means a person licensed or approved by the federal Food and Drug Administration ("FDA") to engage in the manufacture of drugs or devices, consistent with the FDA definition of "manufacturer" under the regulations and interpreted guidances implementing the Prescription Drug Marketing Act.

(12) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing,

distribution, or other services for a manufacturer and takes title to that manufacturer's prescription drug. To be considered part of the normal distribution channel, a manufacturer's exclusive distribution must be an authorized distributor of record.

(13) "Normal distribution channel" means a chain of custody for a prescription drug, excluding all devices and veterinary prescription drugs, that goes directly or by drop shipment from a manufacturer of the prescription drug, or from that manufacturer to that manufacturer's co-licensed partner, or from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor, to:

(A) Either a pharmacy or to other designated persons authorized by law to dispense or administer such drug;

(B) An authorized distributor or record, and then to either a pharmacy, or to other designated persons authorized by law to dispense or administer such drug;

(C) An authorized distributor of record to one other authorized distributor of record to an office based health care practitioner authorized by law to dispense or administer such drug to a patient;

(D) An authorized distributor of record to a pharmacy warehouse or other entity that redistributes by intracompany sale to a pharmacy or other designated persons authorized to dispense or administer the drug;

(E) A pharmacy warehouse or other entity that redistributes by intracompany sale to a pharmacy or other designated persons authorized to dispense or administer the drug; or

(F) Another entity as prescribed by the board's regulations.

(14) "Ongoing relationship" means an association that exists when a wholesale drug distributor, including any member of its affiliated group, as defined in Section 1504 of the Internal Revenue Code, of which the wholesale drug distributor is a member:

(A) Is listed on the manufacturer's list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis; or

(B) Has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship.

(15) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(16) "Pharmacy buying cooperative warehouse" means a permanent physical location that acts as a central warehouse for drugs and

from which sales of drugs are made to a group of pharmacies that are member owners of the buying cooperative operating the warehouse. Pharmacy buying cooperative warehouses must be licensed as wholesale distributors.

(17) "Prescription drug" means any drug (including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices) required by federal law (including federal regulation) to be dispensed only by a prescription, including finished dosage forms and bulk drug substances subject to section 503(b) of the federal Food, Drug and Cosmetic Act ("FFDCA").

(18) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug; provided, however, that this shall not apply to pharmacists in the dispensing of prescription drugs to the patient.

(19) "Repackager" means a person who repackages.

(20) "Third-party logistics provider" means an entity that provides or coordinates warehousing, distribution, or other services on behalf of a manufacturer but does not take title to a drug or have general responsibility to direct the sale or other disposition of the drug. To be considered part of the normal distribution channel, a third party logistics provider must be an authorized distributor of record.

(21) "Wholesale distributor" means any person engaged in wholesale distribution of drugs, including but not limited to repackagers; own label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses and wholesale drug warehouses; independent wholesale drug traders; and retail and hospital pharmacies and chain pharmacy warehouses that conduct wholesale distributions. This term shall not include manufacturers.

(22) "Wholesale distribution" shall not include:

(A) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent, or affiliated or related company under common ownership or control of a corporate entity, except that nothing contained herein shall be construed to prohibit the board from requiring that other records of these transactions shall be kept in accordance with law and regulation not found in this article;

(B) The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons including transfers of a prescription drug from retail pharmacy to retail

pharmacy, except that nothing contained herein shall be construed to prohibit the board from requiring that other records of these transactions shall be kept in accordance with law and regulation not found in this article;

(C) The distribution of prescription drug samples by manufacturers' representatives;

(D) Prescription drug returns when conducted by a retail pharmacy or chain pharmacy warehouse, by a hospital, health care entity, or charitable institution in accordance with 21 C.F.R. Section 203.23, or by any designated persons authorized by law to dispense or administer the prescription drug except in cases where a pedigree is already required under the provisions of this article, in which case any return of that prescription drug to a wholesaler or manufacturer shall be subject to the provisions of Code Section 26-4-202;

(E) The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use, except that nothing contained herein shall be construed to prohibit the board from requiring that other records of these transactions shall be kept in accordance with law and regulation not found in this article;

(F) Retail pharmacies' delivery of prescription drugs to a patient or patient's agent pursuant to the lawful order of a licensed practitioner;

(G) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse, or take legal ownership of the prescription drug;

(H) The sale or transfer from a retail pharmacy, pharmacy buying cooperative warehouse, or chain pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer, originating wholesale distributor, or to a third party returns processor, to the extent permitted by federal rule, regulation, or law; or

(I) The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets. (Code 1981, § 26-4-201, enacted by Ga. L. 2007, p. 463, § 2/SB 205.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

26-4-202. (For effective date, see note.) Pedigrees for prescription drugs.

(a)(1) Each person who is engaged in wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave or have ever left the normal distribution channel in accordance with rules and regulations adopted by the board.

(2) A retail pharmacy or chain pharmacy warehouse shall comply with the requirements of this Code section only if the retail pharmacy or chain pharmacy warehouse engages in wholesale distribution of prescription drugs.

(3) The board shall conduct a study to be completed no later than July 1, 2009, which shall include consultation with manufacturers, distributors, and pharmacies responsible for the sale and distribution of prescription drug products in this state. Based on the results of the study, the board shall establish a mandated implementation date for electronic pedigrees which shall be no sooner than December 31, 2011, and may be extended by the board in one year increments if it appears the technology is not universally available across the entire prescription pharmaceutical supply; provided, however, that no provision of this article shall be effective until such time as the General Assembly appropriates reasonable funds for administration of this subsection. Effective at a date established by the board, pedigrees may be implemented through an approved and readily available system based on electronic track and trace pedigree technology. This electronic tracking system will be deemed to be readily available for use on a wide scale across the entire pharmaceutical supply chain which includes manufacturers, wholesale distributors, and pharmacies. Consideration must be given to the large-scale implementation of this technology across the supply chain and the technology must be proven to have no negative impact on the safety and efficacy of the pharmaceutical product.

(b) Each person in possession of a pedigree for a prescription drug who is engaged in the wholesale distribution of a prescription drug, including repackagers but excluding the original manufacturer of the finished form of the prescription drug and any entity engaged in the activities listed in paragraph (9) of Code Section 26-4-201, and who attempts to further distribute that prescription drug shall affirmatively verify before any distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(c) The pedigree shall include all necessary identifying information concerning each sale in the chain of distribution of the product from the

manufacturer, to acquisition and sale by any wholesale distributor or repackager, and to final sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the pedigree shall include:

(1) The name, address, telephone number, and, if available, e-mail address of each owner of the prescription drug and each wholesale distributor of the prescription drug;

(2) The name and address of each location from which the prescription drug was shipped, if different from the owner's;

(3) Transaction dates;

(4) Certification that each recipient, excluding retail or hospital pharmacies, has authenticated the pedigree;

(5) The name of the prescription drug;

(6) Dosage form and strength of the prescription drug;

(7) Size of the container;

(8) Number of containers;

(9) Lot number of the prescription drug; and

(10) The name of the manufacturer of the finished dosage form.

(d) Each pedigree shall be:

(1) Maintained by the wholesale distributor at its licensed location, unless given written authorization from the board to do otherwise, for three years from the date of sale or transfer; and

(2) Available for inspection, copying, or use at the licensed location upon a verbal request by the board or its designee.

(e) The board shall adopt rules and regulations, including a standard form, relating to the requirements of this article no later than 90 days after the effective date of this article.

(f) Pharmacies licensed pursuant to this chapter shall not be required to possess or maintain any pedigree issued pursuant to this Code section. (Code 1981, § 26-4-202, enacted by Ga. L. 2007, p. 463, § 2/SB 205.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

26-4-203. (For effective date, see note.) Violations; falsified prescription drugs.

(a) If the board finds that there is a reasonable probability that:

(1) A wholesale distributor, other than a manufacturer, has:

(A) Violated a provision of this article; or

(B) Falsified a pedigree, provided a falsified pedigree, or sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use;

(2) The prescription drug at issue in subparagraph (B) of paragraph (1) of this subsection could cause serious, adverse health consequences or death; and

(3) Other procedures would result in unreasonable delay,

the board shall issue an order requiring the appropriate person including the distributors or retailers of the prescription drug to immediately cease distribution of the prescription drug in or to this state.

(b) An order under subsection (a) of this Code section shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than ten calendar days after the date of the issuance of the order, on the actions required by the order. If, after such a hearing, the board determines that inadequate grounds exist to support the actions required by the order, the board shall vacate the order. (Code 1981, § 26-4-203, enacted by Ga. L. 2007, p. 463, § 2/SB 205.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

26-4-204. (For effective date, see note.) Prohibited acts.

It shall be unlawful for a person to perform or cause the performance of or aid and abet any of the following acts in this state:

(1) Selling, distributing, or transferring a prescription drug to a person that is not authorized to receive the prescription drug under the law of the jurisdiction in which the person receives the prescription drug;

(2) Failing to maintain or provide pedigrees as required by the board;

(3) Failing to obtain, transfer, or authenticate a pedigree as required by the board;

(4) Providing the board or any of its representatives or any federal official with false or fraudulent records, including, but not limited to

falsified pedigrees, or making false or fraudulent statements regarding any matter within the provisions of this article;

(5) Obtaining or attempting to obtain a prescription drug by fraud, deceit, or misrepresentation or engaging in misrepresentation or fraud in the distribution of a prescription drug; and

(6) Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the Food and Drug Administration, the manufacturing, repackaging, selling, transferring, delivering, holding, or offering for sale of any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or has otherwise been rendered unfit for distribution. (Code 1981, § 26-4-204, enacted by Ga. L. 2007, p. 463, § 2/SB 205.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

26-4-205. (For effective date, see note.) Penalty.

(a) Notwithstanding Code Section 26-4-115, any person who engages without knowledge in the wholesale distribution of prescription drugs, including providing a falsified pedigree or other records, in violation of this article may be fined not more than $10,000.00.

(b) If a person engages in wholesale distribution of prescription drugs in violation of this article, including providing a falsified pedigree or other records, and acts in a grossly negligent manner in violation of this article, the person may be punished by imprisonment for not more than 15 years, fined not more than $50,000.00, or both.

(c) Notwithstanding Code Section 26-4-115, any person who knowingly engages in wholesale distribution of prescription drugs in violation of this article, including providing a falsified pedigree or other records, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than 25 years, by fine not to exceed $500,000.00, or both. (Code 1981, § 26-4-205, enacted by Ga. L. 2007, p. 463, § 2/SB 205.)

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this article.

ARTICLE 13

SAFE MEDICATIONS PRACTICE ACT

Effective date. — This article became effective July 1, 2010.

26-4-210. Short title.

This article shall be known and may be cited as the "Safe Medications Practice Act." (Code 1981, § 26-4-210, enacted by Ga. L. 2010, p. 195, § 1/HB 361.)

26-4-211. Legislative findings and intent.

(a) The General Assembly finds and declares that:

(1) Medications are essential for the effective treatment and prevention of illness and disease, and medications, particularly dangerous drugs, are recognized to be complex chemical compounds which may cause untoward side effects, adverse reactions, and other undesirable and potentially harmful effects;

(2) Hospital pharmacists are highly trained in the therapeutic use of medications and have expertise in the safe, appropriate, and cost-effective use of medications; and

(3) Therefore, it is essential that physicians, pharmacists, and other clinical health care practitioners in an institutional setting collaborate to promote safe and effective medication therapy for the institution's patients.

(b) The intent of the General Assembly in enacting this legislation is to maximize patient safety, to ensure safe and desirable medication therapy outcomes, and to achieve desired therapeutic goals. (Code 1981, § 26-4-211, enacted by Ga. L. 2010, p. 195, § 1/HB 361.)

26-4-212. Definitions.

As used in this article, the term:

(1) "Collaborate" means to work jointly with others as approved by an order from a physician member of the institution's medical staff for care and treatment of the ordering physician's patients or pursuant to a protocol established in accordance with medical staff policy.

(2) "Hospital pharmacist" means a pharmacist that is employed by, or under contract with, an institution and practicing in an institutional setting.

(3) "Institution" means any licensed hospital, nursing home, assisted living community, personal care home, or hospice. (Code 1981, § 26-4-212, enacted by Ga. L. 2010, p. 195, § 1/HB 361; Ga. L. 2011, p. 227, § 9/SB 178.)

The 2011 amendment, effective July 1, 2011, inserted "assisted living community," in paragraph (3).

26-4-213. Collaboration.

Hospital pharmacists shall be authorized to collaborate with members of the medical staff in an institution on drug therapy management. (Code 1981, § 26-4-213, enacted by Ga. L. 2010, p. 195, § 1/HB 361.)

26-4-214. Role of State Board of Pharmacy and Georgia Composite Medical Board in establishing rules and regulations.

(a) The State Board of Pharmacy shall establish rules and regulations governing a hospital pharmacist acting pursuant to Code Section 26-4-213 in the provision of drug therapy management in institutions in consultation or collaboration with physicians. Such rules may include the utilization of a hospital pharmacist's skills regarding dangerous drugs to promote medication safety. Such rules shall include the ordering of clinical laboratory tests in the institutional setting and the interpretation of results related to medication use when approved by a physician member of the institution's medical staff for the care and treatment of the ordering physician's patients or pursuant to a protocol established in accordance with medical staff policy.

(b) The Georgia Composite Medical Board shall establish rules and regulations governing a physician acting pursuant to this article. (Code 1981, § 26-4-214, enacted by Ga. L. 2010, p. 195, § 1/HB 361.)

Cross references. — Georgia Composite Medical Board, Art. 1, Ch. 34, T. 43.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "institution's" was substituted for "institutions's" in the last sentence of subsection (a).

CHAPTER 5

DRUG ABUSE TREATMENT AND EDUCATION PROGRAMS

Sec.
26-5-3. Definitions.

26-5-3. Definitions.

As used in this chapter, the term:

(1) "Department" means the Department of Community Health or its successor.

(2) "Drug abuse treatment and education program" means any system of treatment or therapeutic advice or counsel provided for the rehabilitation of drug dependent persons and shall include programs offered in the following types of facilities:

(A) Residential care centers. A facility staffed by professional and paraprofessional persons offering treatment or therapeutic programs for drug dependent persons who live on the premises; and

(B) Nonresidential care centers. A non-live-in facility, staffed by professional and paraprofessional persons, offering treatment or therapeutic programs for drug dependent persons who do not live on the premises.

(3) "Drug dependent person" means a person who is in imminent danger of becoming dependent upon or addicted to the use of drugs or who habitually lacks self-control as to the use of drugs or who uses drugs to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted.

(4) "Drugs" means any substance defined as a drug by federal or Georgia law or any other chemical substance which may be used in lieu of a drug to obtain similar effects, with the exception of alcohol and its derivatives.

(5) "Governing body" means the county board of health, the partnership, the corporation, the association, or the person or group of persons who maintains and controls the program and who is legally responsible for the operation.

(6) "License" means the official permit issued by the director which authorizes the holder to operate a drug abuse treatment and education program for the term provided therein.

(7) "Licensee" means any person holding a license issued by the director under this chapter.

(8) "Program" means the drug abuse treatment and education program. (Ga. L. 1972, p. 714, § 3; Ga. L. 1982, p. 3, § 26; Ga. L. 1985, p. 476, § 2; Ga. L. 1991, p. 94, § 26; Ga. L. 2009, p. 453, § 1-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in paragraph (1).